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CUSTOMS ACT 1901 - PART XVB

REPORT
NO. 459

REVIEW OF ANTI-DUMPING MEASURES APPLYING TO

DEEP DRAWN STAINLESS STEEL SINKS EXPORTED TO AUSTRALIA FROM THE PEOPLE'S REPUBLIC OF CHINA

BY

SHENGZHOU CHUNYI ELECTRICAL APPLIANCES CO. LTD.

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ABBREVIATIONS

304 SS CRC	304 stainless steel cold rolled coil
ABF	Australian Border Force
the Act	the *Customs Act 1901*
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
the applicant, or Milena	Milena Australia Pty Ltd
the Assistant Minister	the Assistant Minister for Science, Jobs and Innovation
China	the People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	Cost to make and sell
Dumping Duty Act	*Customs Tariff (Anti-Dumping) Act 1975*
GOC	Government of China
the goods	the goods the subject of the application (also referred to as the goods under consideration)
MEPS	MEPS (International) Ltd
NIP	Non-injurious price
the Regulation	*Customs (International Obligations) Regulation 2015*
REP 238	*Anti-Dumping Commission Report No. 238*
REP 352	*Anti-Dumping Commission Report No. 352*
Review period	1 October 2016 to 30 September 2017
SCEA	Shengzhou Chunyi Electrical Appliances Co. Ltd.
SEF	Statement of essential facts
SG&A	Selling, general and administrative costs
Tasman	Tasman Sinkware Pty Ltd

1 SUMMARY AND RECOMMENDATION

1.1 Summary

This review is in response to an application from Milena Australia Pty Ltd (Milena) (the applicant) to review the anti-dumping measures, in the form of a dumping duty notice and a countervailing duty notice, applying to certain deep drawn stainless steel sinks (the goods) exported to Australia from the People's Republic of China (China) as they apply to Shengzhou Chunyi Electrical Appliances Co. Ltd. (SCEA).

The application for review is based on a change in the variable factors[1] relevant to the taking of the anti-dumping measures in relation to the applicant. In this case the relevant variable factors are the export price, normal value, non-injurious price (NIP) and amount of countervailable subsidy received in respect of the goods.

Exports from SCEA are currently subject to an effective rate of combined interim dumping duty and interim countervailing duty of 34.3%.The applicant claims that the export price, normal value and amount of countervailable subsidy have changed from the time when the last review was conducted.

1.2 Applicable law

Division 5 of Part XVB of the *Customs Act 1901* (the Act)[2] enables affected parties to apply for a review of anti-dumping measures. The division, among other matters:

- sets out the circumstances in which an application for the review of anti-dumping measures can be made;
- sets out the procedure to be followed by the Commissioner of the Anti-Dumping Commission (the Commissioner) in dealing with such an application and preparing a report containing recommendations for the Assistant Minister for Science, Jobs and Innovation (the Assistant Minister); and
- empowers the Assistant Minister, after consideration of such reports, to leave the measures unaltered or to modify them as appropriate.

1.3 Findings and recommendation

The Commissioner has conducted a review of the anti-dumping measures, in respect of exports of the goods from China to Australia, in so far as they affect SCEA, and is satisfied that the variable factors relevant to the taking of those measures (being the export price, normal value, NIP and amount of countervailable subsidy received) in relation to SCEA have changed. The Commissioner therefore recommends to the Assistant Minister that the dumping duty notice and countervailing duty notice have effect in relation to SCEA as if different variable factors had been ascertained.

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[1] Subsection 269T(4E) of the *Customs Act 1901*.

[2] A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

The new effective rate of combined interim dumping duty and interim countervailing duty applicable to the goods exported to Australia from China by SCEA will be 8.0 per cent.

2 BACKGROUND

2.1 Existing measures

On 26 March 2015, the then Parliamentary Secretary to the then Minister for Industry and Science (then Parliamentary Secretary) decided to accept the Commissioner's recommendations in the original investigation into the alleged dumping and subsidisation of deep drawn stainless steel sinks exported to Australia from China. The findings of this investigation are detailed in *Anti-Dumping Commission Report No. 238* (REP 238) and interested parties were advised of the outcome of the investigation in Anti-Dumping Notice (ADN) No. 2015/41. On 16 October 2015, following review by the Anti-Dumping Review Panel (ADRP), the then Parliamentary Secretary gave public notice that she had affirmed her decision to impose anti-dumping measures.

On 16 May 2016, the Commissioner initiated a review of Anti-Dumping measures into deep drawn stainless steel sinks exported to Australia from China by SCEA following an application lodged by Milena, an importer of deep drawn stainless steel sinks in Australia.

In that review, and as outlined in *Anti-Dumping Commission Report No. 352* (REP 352), it was found that:

- the export price had changed;
- the normal value had changed;
- the NIP had changed;
- the amount of countervailable subsidy received had changed.

Particulars of the dumping and subsidy margins established for SCEA and the effective rate of duty are set out in the following table.

Dumping Margin	Subsidy Margin	Effective rate of combined interim countervailing duty and interim dumping duty*	Duty Method
34.13%	20.03%	34.33%	For interim dumping duty: *ad valorem* duty method. For interim countervailing duty: proportion of the export price of the goods.

* The calculation of combined dumping and countervailing duties is not simply a matter of adding the dumping and subsidy margins together for any given exporter. Rather, the collective interim dumping duty and interim countervailing duty imposed in relation to the goods, is the sum of:

- the subsidy rate calculated for all countervailable programs, and
- the dumping rate calculated, less an amount for the subsidy rate applying to Program 1.

The findings and recommendations in REP 352 were provided to the then Assistant Minister recommending that the notices have effect in relation to SCEA as if different variable factors had been ascertained. Interested parties were advised of this outcome in Anti-Dumping Notice No. 2016/107 on 21 November 2016.

The applicant sought a review of the decision to the ADRP, and a review was initiated on 5 January 2017. As a result of the review, the ADRP recommended the then Assistant Minister affirm the reviewable decision. The then Assistant Minister accepted the ADRP's recommendation and affirmed the reviewable decision.

2.2 The current review application

On 30 November 2017, an application was lodged by Milena requesting a review of the anti-dumping measures as they apply to the goods exported to Australia from China by SCEA. In its application, the applicant claims that certain variable factors relevant to the taking of the anti-dumping measures as they apply to the goods exported by SCEA have changed.

The Commissioner examined the application and decided not to reject the application. *Consideration Report No. 459* was published on the website of the Anti-Dumping Commission (the Commission) detailing the reasons for not rejecting the application. Notification of the initiation of the review was made in ADN No. 2017/187, which was published on the Commission's website on 21 December 2017.

The review period for the purpose of this review is 1 October 2016 to 30 September 2017. The review is limited to examining whether the variable factors, relevant to the taking of the anti-dumping measures as they affect SCEA, have changed.

2.3 Review process

If anti-dumping measures have been taken in respect of goods and an affected party considers it may be appropriate to review those measures because one or more of the variable factors relevant to the taking of the measures as they affect a particular exporter or exporters generally have changed, the affected party may request that the Commissioner initiate a review.[3]

Where the measures involve the publication of a dumping duty notice or countervailing duty notice, an application for review must not be made earlier than 12 months after the publication of a notice declaring the outcome of the last review of the relevant dumping or countervailing duty notice.[4] The Assistant Minister may, however, at any time request that the Commissioner initiate a review.[5]

If an application for a review of anti-dumping measures is received and not rejected, the Commissioner must, within 110 days or such longer period as the Assistant Minister allows, place on the public record a statement of essential facts (SEF) on which he proposes to base recommendations to the Assistant Minister in relation to the review of those measures.[6]

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[3] Subsection 269ZA(1)
[4] Subsection 269ZA(2)(a)
[5] Subsection 269ZA(3)
[6] Subsection 269ZD(1)

The Commissioner must, after conducting a review of anti-dumping measures and within 155 days or such longer period as the Assistant Minister may allow, give the Assistant Minister a report setting out recommendations on the review of the measures.[7]

In making recommendations in his report to the Assistant Minister, the Commissioner must have regard to:

- the application for review;
- any submission relating generally to the review of the anti-dumping measures to which the Commissioner had regard for the purpose of formulating the SEF;
- the SEF; and
- any submission made in response to the SEF that is received by the Commissioner within 20 days of it being placed on the public record.[8]

Additionally, the Commissioner may have regard to any other matter he considers to be relevant to the review.[9]

After the Assistant Minister considers the report of the Commissioner and any other information that the Assistant Minister considers relevant, the Assistant Minister must publish a notice declaring that the dumping duty notice and/or countervailing duty notice:

- remain unaltered; or
- be revoked in its application to a particular exporter or to a particular kind of goods or revoked generally;[10] or
- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.[11]

The Assistant Minister must make a declaration within 30 days of receiving the report or, if the Assistant Minister considers there are special circumstances that prevent the declaration being made within that period, such longer period as the Assistant Minister considers appropriate.[12]

2.4 Statement of essential facts (SEF 459)

On 14 March 2018, the Commissioner placed on the public record SEF 459, to inform all interested parties of the essential facts on which the Commissioner proposed to base a recommendation to the Assistant Minister in relation to this review of measures. The Commissioner received no submissions in response to SEF 459.

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[7] Subsection 269ZDA(1)
[8] Subsection 269ZDA(3)(a)
[9] Subsection 269ZDA(3)(b)
[10] Subsection 269ZDB(1AA) provides that a revocation declaration cannot be made by the Assistant Minister unless a revocation review notice has been published in relation to the review.
[11] Subsection 269ZDB(1)(a)
[12] Subsection 269ZDB(1A)

3 THE GOODS AND LIKE GOODS

3.1 Findings

The Commissioner finds that the goods exported to Australia by SCEA are goods subject to the anti-dumping measures.

3.2 Legislative framework

The Commissioner must be satisfied that 'like' goods to the goods the subject of the anti-dumping measures are produced in Australia.

In making this assessment, the Commissioner must first determine that the goods produced by the Australian industry are like goods to the imported goods. Subsection 269T(1) defines like goods as:

> *"…goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration".*

Subsection 269T(2) specifies that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In accordance with subsection 269T(3), for goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of those goods must be carried out in Australia.

3.3 The goods subject to the anti-dumping measures

The goods to which the current anti-dumping measures apply (the goods) are:

> *Deep drawn stainless steel sinks with a single deep drawn bowl having a volume of between 7 and 70 litres (inclusive), or multiple drawn bowls having a combined volume of between 12 and 70 litres (inclusive), with or without integrated drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel and whether or not including accessories.*

3.4 Exempted goods

On 5 July 2017, the then Assistant Minister accepted the findings of Exemption Inquiry EX0047 and signed Ministerial Exemption Instrument No. 6 of 2017, thereby exempting from the anti-dumping measures imported lipped laundry tubs (a subset of the goods) of a capacity less than 40 litres. The effective date of the exemption was 11 October 2016. Milena was the applicant for this exemption.

3.5 Tariff classification

The goods are classified within tariff subheading 7324.10.00 (statistical code 52), in Schedule 3 of the *Customs Tariff Act 1995.*

3.6 The goods exported by SCEA

SCEA exports only laundry tubs to Australia including “lipped” laundry tubs for the purpose of mounting on a cabinet to make a free standing laundry cabinet. The Commission examined product specification documentation provided by SCEA and is satisfied that the goods fall within the goods description at 3.3 above.

4 EXPORTER INFORMATION

4.1 Finding

The Commissioner is satisfied that the information provided by SCEA for the purposes of this review is accurate, relevant and complete.

4.2 Exporter questionnaires

The Commission provided SCEA with two exporter questionnaires to complete in relation to the review period. SCEA provided detailed information and data in its response to the exporter questionnaires, including data relating to its export and domestic sales and cost to make and sell (CTMS). SCEA has also provided additional information when requested.

4.3 Accuracy, relevance and completeness of information supplied by SCEA

Based on the volume of SCEA's exports relative to the total export volume from China, the Commission decided not to conduct an on-site verification visit at SCEA's premises.

The Commission tested the accuracy, relevance and completeness of SCEA's data to a satisfactory level. Those tests included comparison of SCEA's data to data verified in the recent reviewDA0086 and data from the Australian Border Force (ABF) import database. The Commission is satisfied as to the accuracy, relevance and completeness of the data provided by SCEA during this verification and upon which the findings of this review is based.

4.4 Goods produced and sold in China by SCEA

SCEA advised that, during the review period, its domestic sales of the goods were dissimilar to its export sales, and consisted of goods with different physical characteristics, different accessories and having different end uses. SCEA stated in its response to the exporter questionnaires that it doesn't sell laundry tubs into the local Chinese market. Product specification documentation supplied by SCEA generally supported this claim.

4.5 Australian Border Force database

The Commission compared SCEA's export sales information to the data in the ABF's import database. The data supplied by SCEA was consistent with the ABF database.

5 VARIABLE FACTORS – DUMPING DUTY NOTICE

5.1 Findings

The Commissioner finds that the export price and normal value in relation to the goods exported to Australia by SCEA have changed.

The Commissioner therefore recommends to the Assistant Minister that the dumping duty notice have effect in relation to SCEA as if different variable factors had been ascertained.

5.2 Export price

5.2.1 Low volume exporter provisions

The *Customs Amendment (Anti-Dumping Measures) Act 2017*, which came into force on 31 October 2017, amended section 269TAB of the Act concerning the determination of export prices in a review of anti-dumping measures under Division 5 of Part XVB of the Act. The amendments, set out in subsection 269TAB(2B), provide three methods to determine an export price where there are no exports, or a low volume of exports, during the period examined for a review of measures.

To determine whether subsection 269TAB(2B) applies, subsection 269TAB(2A) considers the following factors:

- previous volumes of exports of those goods to Australia by that exporter;
- patterns of trade for like goods; and
- factors affecting patterns of trade for like goods that are not within control of the exporter.

The Commission has considered these elements as set out above in regards to SCEA.

Previous volumes of exports by SCEA – subsection 269TAB(2A)(b)(i)

SCEA exported the goods to Australia prior to the review period. The Commission has compared previous export volumes to those in the current review period and determined that SCEA is exporting similar volumes of the goods to Australia as previously.

Patterns of trade for like goods – subsection 269TAB(2A)(b)(ii)

The Commission has examined exports of the goods to Australia from all sources. This examination indicates that demand for the goods persists in the Australian domestic market generally, and there does not appear to have been a marked decline in overall volume of the goods exported to Australia.

Factors affecting patterns of trade – subsection 269TAB(2A)(b)(iii)

The Commission notes that the explanatory memorandum[13] for these provisions identifies factors that may affect patterns of trade for like goods that are not within the control of the

[13] Explanatory memorandum to the *Customs Amendment (Anti-Dumping Measures) Bill 2017*, page 31

exporter. Such factors may include supply disruptions or natural events (such as flood, drought or fire) that affect production levels. The Commission considers that there does not appear to be any factors (such as natural events) that are not within the control of SCEA that are affecting trade for like goods.

Commission's consideration – subsection 269TAB(2A)

Having regard to the above, the Commission considers that, for SCEA, there is not an absence or low volume of exports to Australia, and there is sufficient and reliable information to ascertain an export price under subsection 269TAB(1).

5.2.2 Subsection 269TAB(1) export price

Subsection 269TAB(1)(a) states that the export price of any goods exported to Australia is the price paid or payable for the goods by the importer where, inter alia, the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter in arms length transactions.

SCEA exports the goods exclusively to Milena. The Commission considers that for the goods imported by Milena from SCEA, the goods have been exported to Australia otherwise than by the importer. However, because an intermediary is the vendor directly dealing with Milena in Australia, the export price cannot be assessed under subsection 269TAB(1)(a), as there has been no purchase by Milena from SCEA.

Similarly, as there has been no purchase by Milena from SCEA, the export price cannot be determined under subsection 269TAB(1)(b).

The Commission therefore recommends the export price for the goods imported by Milena from SCEA through the vendor be established under subsection 269TAB(1)(c) of the Act, having regard to all the circumstances of the exportation, specifically the free on board (FOB) invoice price between SCEA and the intermediary.

The resulting export price for the goods exported by SCEA is different to the current ascertained export price applicable to SCEA's exports.

The Commission calculated the export price for the consignment of the goods at **Confidential Appendix 1.**

5.3 Normal value

Subsection 269TAC(1) states that the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

Subsection 269TAC(2)(a)(i) provides that the normal value of the goods exported to Australia cannot be ascertained under subsection 269TAC(1) where the Assistant Minister is satisfied that:

> *…because of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price*

> *under subsection (1)…the normal value of the goods exported to Australia cannot be ascertained under subsection (1).*

In such cases, subsection 269TAC(2) stipulates the method for calculating the normal value of the goods.

As a result of the exporter verification, and consistent with previous findings, the Commission found there were insufficient sales of like goods in China that would be relevant for determining normal values under subsection 269TAC(1), in accordance with subsection 269TAC(2)(a)(i).

This is because there were key differences between goods sold domestically and for export that rendered the domestic sales unsuitable for use in determining normal values for the exported goods. These differences include:

- Design – export and domestic tubs are a different design and shape
- Dimensions – export and domestic tubs are different sizes and depths
- Finish – export tubs have a 'brushed' or 'polished and silvered' finish while domestic tubs have a 'satin' finish, and
- Thickness – 0.8 mm steel for export tubs and 1.0 mm steel for domestic tubs.

Noting the nature of the above differences, and the limitations of SCEA's cost data, the Commission considers that an accurate and meaningful method cannot be found to adjust the domestic selling price of any models sold domestically by SCEA to make it comparable with the export price. In other words, while there were domestic sales of like goods during the importation period, those sales were not relevant for the purposes of comparison with export prices due to key differences between the goods exported to Australia and those sold domestically.

In such a case, the Act provides that normal values may be determined on the basis of a cost construction (subsection 269TAC(2)(c)) or third country sales (subsection 269TAC(2)(d)). SCEA stated that the goods exported to third countries are totally different to the goods exported to Australia. The Commission considers that third country sales are similarly not suitable for determining normal values. The Commission has therefore constructed normal values in accordance with subsection 269TAC(2)(c).

Subsection 269TAC(2)(c) provides that constructed normal values are to be calculated as the cost of production of the goods in the country of export plus, on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export, the selling, general and administrative (SG&A) costs associated with the sale, and an amount for profit.

The Commission has undertaken the construction of normal values under subsection 269TAC(2)(c) in relation to all sales by SCEA. As required, the Commission has performed this construction in accordance with the conditions of sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015* (the Regulation) as outlined below.

The Commission calculated a normal value for the goods at **Confidential Appendix 4.**

5.3.1 Cost of production

In calculating a constructed normal value under subsection 269TAC(2)(c), the cost of production of the goods in the country of export is to be established in accordance with section 43 of the Regulation.[14]

Subsection 43(2) of the Regulation requires the Commission to determine the cost of production by using the information set out in an exporter's records if the exporter keeps records relating to the goods, and the records:

- are in accordance with generally accepted accounting principles (GAAP) in the country of export; and
- reasonably reflect competitive market costs associated with the production or manufacture of the goods.

The Commission is satisfied that SCEA's records are kept in accordance with the GAAP in China, however in REP 238 the Commissioner identified that the costs of the main raw material used to manufacture deep drawn stainless steel sinks, 304 grade stainless steel cold-rolled coil (304 SS CRC), incurred by Chinese exporters did not reasonably reflect competitive market costs for that input on the basis that prices in China are affected by Government of China (GOC) influences in the iron and steel industry.[15] The Commission has no evidence that this situation has changed and therefore finds that cost of 304 SS CRC in SCEA's records does not reasonably reflect a competitive market cost.

Refer **Confidential Appendix 2** for domestic and export CTMS.

In REP 238 the Commissioner then considered how best to determine what a competitive market substitute price for this input in China should be, having regard to all available information. The Commissioner determined that the most reasonable option available was a MEPS International Pty Ltd (MEPS)-based average price for 304 SS CRC using the monthly reported MEPS North American and European prices (excluding the Asian price).[16]

For REP 352[17] and duty assessments applicable to exports of the goods from China the Commission sought to update this benchmark with data purchased from MEPS, however MEPS did not consent to the use of this data by the Commission. The Commission therefore sought alternative sources of benchmark prices for 304 SS CRC that were relevant to this importation period.

The Commission sought to replicate the original benchmark price methodology, which was based on an average of North American and European prices. From the Commission's research, S&P Global Platts (Platts) appeared to be the only reliable source available for stainless steel prices from both of these regions. The Commission therefore considers that Platt's prices are suitable for use as benchmark prices in this review, and selected the following three price series:

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[14] Subsection 269TAC(5A)(a)
[15] REP 238 at section 6.9 and Non-Confidential Appendix 4 refer
[16] REP 238 at section 6.10.1 and Non-Confidential Appendix 8 refer
[17] Review of the anti-dumping measures insofar as they affect exports of the goods by SCEA

- Northern Europe domestic – CR 304 2B 2mm coil transaction price – delivered
- Southern Europe domestic – CR 304 2B 2mm coil transaction price – delivered
- Northern America domestic – CR 304 2B 14 gauge transaction price – ex-mill US

The Commission applied the same methodology to adjust SCEA's costs as was applied in the original investigation.[18] Where an adjustment to the benchmark price for inland transport (delivery from the mill to SCEA) or slitting costs (where SCEA purchased pre-cut stainless steel sheets instead of a coil) was required, the same amounts from the original investigation were used, as these were based on verified information from cooperating exporters in that investigation.

Refer **Confidential Appendix 6** for details of benchmark calculations for the goods**.**

For the other costs of production of the goods exported to Australia (labour, overheads, depreciation, accessories and packaging), the Commission used the information set out in SCEA's records, as the Commission found that those costs as set out in SCEA's records reasonably reflect competitive market costs associated with the production of the goods.

5.3.2 Selling, general and administrative costs

In calculating a constructed normal value under subsection 269TAC(2)(c), the SG&A costs are to be established in accordance with section 44 of the Regulation.[19]

Subsection 44(2) of the Regulation requires the Commission to determine SG&A costs by using the information set out in an exporter's records if the exporter keeps records relating to the sale the like goods in the country of export, and the records:

- are in accordance with GAAP in the country of export; and
- reasonably reflect the SG&A costs associated with the sale of the like goods.

The Commission is satisfied that the above conditions are met in this case and has therefore used SCEA's domestic SG&A costs in constructing the normal values.

In accordance with subsection 269TAC(9), to ensure that the normal value is properly comparable with the export price, the Commission has made the following adjustments to the SG&A costs:

- add export inland freight;
- add handling and other port charges; and
- add 8% for the difference in VAT liability between the export and domestic markets.

[18] REP 238 at section 6.10.2 refers
[19] Subsection 269TAC(5A)(b)

5.3.3 Profit

When constructing normal values under subsection 269TAC(2)(c), the amount of profit included in the normal value is to be determined having regard to section 45 of the Regulation.[20]

Subsection 45(2) of the Regulation provides that, if reasonably practicable, profit is to be determined by using data relating to the production and sale of like goods sold by the exporter in the ordinary course of trade. The Commission found that all of SCEA's domestic sales of like goods were made in the ordinary course of trade. The Commission therefore calculated profit on these sales as a percentage of SCEA's domestic CTMS and applied this to the constructed normal value.

Refer **Confidential Appendix 3** for profit calculations.

5.4 Dumping margin

The Commission has calculated a dumping margin for the review period by comparing the weighted average of export prices of the goods during the review period, with the weighted average of corresponding normal values in accordance with subsection 269TACB(2)(a) of the Act.

The Commission calculated a single product dumping margin of 8.0 per cent at **Confidential Appendix 5**.

[20] Subsection 269TAC(5B)

6 VARIABLE FACTORS – COUNTERVAILING DUTY NOTICE

6.1 Finding

The Commissioner finds that the amount of countervailable subsidy received by, and therefore the subsidy margin applicable to, SCEA has changed.

The Commissioner recommends to the Assistant Minister that the countervailing duty notice have effect in relation to SCEA as if different variable factors had been ascertained.

6.2 Programs reviewed

The Commission found in the original investigation that countervailable subsidies had been received by exporters in respect of the goods exported to Australia from China, under 23 subsidy programs. The Commission requested that SCEA provide information and data regarding these subsidy programs and any other subsidies they received during the review period as part of its response to the exporter questionnaire.

In the original investigation SCEA was deemed to be an uncooperative exporter. In the absence of GOC advice regarding the individual enterprises that had received financial contributions under each of the investigated subsidy programs, the Commissioner had regard to the available relevant facts and determined that uncooperative exporters had received financial contributions conferring a benefit under all 23 programs found to be countervailable in relation to the goods.

In REP 352 the Commission found that SCEA received benefits under two of the 23 original programs (Programs 1 and 8).

SCEA provided information and data regarding its steel purchases of 304 SS CRC, which is relevant for the purposes of determining whether SCEA received a benefit under Program 1. SCEA indicated it did not receive a countervailable subsidy fitting the description of Program 8 during the review period because it had made a loss for the previous reporting period. SCEA did not identify any other subsidy programs and the Commission found no evidence in SCEA's financial statements or accounts that it received a benefit under any other program during the review period.

6.2.1 Program 1 - Raw materials provided by the government at less than fair market value

Program 1 was found to be a countervailable subsidy in the original investigation on the basis that the program:

- involves a financial contribution, being the provision of 304 SS CRC at less than adequate remuneration;
- was provided by public bodies, being state invested enterprises (SIEs);
- confers a benefit equal to the amount of the difference between the purchase price and the adequate remuneration; and

- is specific, in that only enterprises engaged in the manufacture of downstream products for which 304 SS CRC is a key input would benefit from the provision of the input by the GOC at less than adequate remuneration.[21]

No evidence was provided to the Commission that these conditions have changed and therefore finds that Program 1 is still a countervailable subsidy. In REP 238 the Commissioner determined the adequate remuneration and thus the amount of the benefit received by reference to the same MEPS-based benchmark price used as a competitive market substitute price in the constructed normal value. As described above in section 5.3.1, the Commission was unable to update this benchmark and sourced an alternative benchmark based on pricing data published by Platts. The Commission considers that this is the best available benchmark for determining adequate remuneration under Program 1 in this review.

SCEA identified that the majority of its purchased 304 SS CRC was manufactured by SIEs. The Commission compared the prices SCEA paid to the SIEs to the Platts-based benchmark price and found that SCEA received a benefit over the review period. The Commission therefore considers that SCEA was in receipt of a countervailable subsidy under Program 1 during the review period.

6.2.2 Program 8 – Tax preference available to companies that operate at a small profit

Program 8 was found to be a countervailable subsidy in the original investigation, being a tax preference available to companies that operate at a small profit.[22]

SCEA confirmed that it did not receive a benefit under Program 8 during the review period as a result of making a loss for the previous reporting period. 2017 Financial statements confirm the loss and nil tax payable.

6.3 Countervailable subsidisation

The Commission has found that SCEA was in receipt of one countervailable subsidy, Program 1, during the review period. The subsidy margin is 1.0 per cent and the calculation is at **Confidential Appendix 6**.

6.4 Removal of 'double-count'

As outlined in Section 5.3.1, the Commission has calculated constructed normal values for the purposes of this review by applying an uplift to SCEA's CTMS to ensure the costs of 304 SS CRC recorded in that CTMS reflects reasonably competitive market costs.

In addition, as discussed in Section 6.2.1, the Commission has quantified an amount of the countervailable subsidy for Program 1 by comparing the actual cost incurred for 304 SS CRC inputs to a benchmark determined to represent adequate remuneration for those inputs, which is the same benchmark used to uplift normal values mentioned above.

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[21] REP 238 at Appendix 8, Part III(i)
[22] REP 238 at Appendix 8, Part IV

Consequently, the substitution of benchmark 304 SS CRC costs in constructed normal values, and the use of benchmark 304 SS CRC costs for subsidy Program 1, leads to an assessment of dumping margins and subsidy margins that may contain some element of overlap, or double-count.

For this reason, the Commission considers that this subsidy amount for Program 1 should not be included in the dumping margin because to do so would be double counting for the same situation. This is because, where the ascertained normal value is equal to the ascertained export price, the maximum amount of the countervailable subsidy is equal to the difference between the actual cost of 304 SS CRC and the replacement cost of 304 SS CRC used in constructing normal value (when measured on a weighted average basis). This difference has already been incorporated in the constructed normal value.

Therefore, in order to avoid any double-count of dumping duty and countervailing duty in this situation, the Commission has ascertained a final rate of interim dumping duty less an amount for the subsidy rate applying to Program 1, which in this case is 1.0 per cent, as the Commission found that Program 1 was the only subsidy program to confer a benefit in relation to the goods exported to Australia during the review period.

7 NON-INJURIOUS PRICE

7.1 Finding

The Commissioner finds that the NIP in relation to the goods exported to Australia by SCEA has changed.

7.2 General

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

Under subsections 8(5BA) and 10(3D) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), where a dumping duty notice and countervailing duty notice are published at the same time in respect of the same goods, the Assistant Minister must have regard to the desirability of ensuring that the total amount of dumping duty and countervailing duty is not greater than is necessary to prevent injury or a recurrence of the injury. This is known as the 'lesser duty rule'.

However, the Assistant Minister is not required to have regard to the lesser duty rule if one or more of the following apply:

- where a 'particular market situation' exists in the market of the export country, which renders domestic selling prices unsuitable for establishing normal value;
- where two or more members of the Australian industry are small-medium enterprises; or
- where the country in relation to which the subsidy has been provided has not complied with Article 25 of the Agreement on Subsidies and Countervailing Measures (which relates to providing notification of its subsidies to the World Trade Organization).[23]

None of the above circumstances apply in this case, therefore the Commissioner has had regard to the lesser duty rule.

Subsections 269TACA(a) and (c) of the Act identify the NIP of the goods exported to Australia as the minimum price necessary to remove the injury caused by the dumping and countervailable subsidisation. The Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP). Deductions from this figure are made for post-exportation costs to derive a NIP that is expressed in similar delivery terms to export price and normal value (e.g. FOB).

Where the NIP is lower than the normal value, the duty is calculated with respect to the difference between export price and NIP, thereby giving effect to the lesser duty rule.

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[23] Subsections 8(5BAAA) and 10(3DA) of the Dumping Duty Act

7.3 Assessment of USP and NIP

The Dumping and Subsidy Manual states that the USP will normally be based upon the Australian industry's selling prices at a time unaffected by dumping.[24] The Manual further states that Australian industry selling prices older than five years should not be used in calculating the USP and the Commission will not use the approach of updating old prices if the market, in particular the Australian industry's selling prices, were affected by dumping over the entire injury analysis period. The Australian industry producing like goods, Tasman Sinkware Pty Ltd (Tasman), claimed in the original investigation that it started suffering injury from dumping in the 2009-10 financial year and suffered sustained injury from that time.

The Manual further states that where it is not reasonable to use the price or market approach in establishing USP, a weighted average of the most recent verified industry CTMS will generally be used, plus a reasonable amount for profit.[25]

Consequently, the Commission proposes that for the purpose of this review and similar to REP 352, a USP will be determined based on Tasman's weighted average CTMS during the review period, plus an amount of for profit. The Manual states that the options for determining a reasonable amount for profit are:

- weighted average profit rate (% mark-up) achieved by the industry in the most recent period unaffected by dumping, with a preference for a one year minimum; or
- profit rate (% mark-up) from the Australian industry's similar category of goods (where the data for similar category of goods is verified).[26]

The Commission has sufficient verified information to calculate a profit rate under the first option. However it does not have verified data for the Australian industry's CTMS and sales of a similar general category of goods, and is therefore unable to determine a profit rate under the second option above.

In its original application for anti-dumping measures, Tasman provided CTMS and sales data for the 2008-09 financial year, which was a period unaffected by dumping. The Commission therefore proposes to use the weighted average profit rate from this period to calculate the USP, as it is the best available information in this review.

In REP 352 the Commission examined Tasman's sales during the 2008-09 financial year, which was a period unaffected by dumping. However, the Commission determined that Tasman's sales of single bowl sinks in 2008-09 were not profitable and SCEA only exports single bowl sinks to Australia, therefore an amount for profit was not included. The Commission has followed the same approach in this review and not included an amount for profit in determining the USP.

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[24] Dumping and Subsidy Manual at Section 23.2
[25] Dumping and Subsidy Manual at Section 23.3
[26] ibid.

The NIP has been calculated to FOB delivery terms by deducting from the USP amounts for:

- importer SG&A costs;
- Australian customs duty and importation costs; and
- overseas freight.

Details of the USP and NIP calculations are at **Confidential Appendix 7**. On this basis the NIP is higher than the normal value and therefore is not the operative measure.

8 EFFECT OF THE REVIEW

8.1 Findings

The Commissioner has found that, in relation to exports to Australia of the goods from China by SCEA during the review period, the:

- export price has changed;
- normal value has changed;
- NIP has changed; and
- amount of countervailable subsidy received has changed.

8.2 Recommendations

Under subsection 269ZDA(1)(a)(iii), the Commissioner recommends that the dumping duty notice and the countervailing duty notice have effect in relation to SCEA as if different variable factors had been ascertained.

Consistent with the current form of measures, the Commissioner recommends that the interim dumping duty and interim countervailing duty be worked out in accordance with the *ad valorem* duty method (i.e. a percentage of the export price).

The Commissioner recommends that the Assistant Minister be satisfied that:

- in accordance with subsection 269TAC(2)(a)(i), the normal value of the goods exported to Australia from China by SCEA cannot be ascertained under subsection 269TAC(1) because of a low volume of sales of like goods in the Chinese domestic market that would be relevant for the purpose of determining a price under subsection 269TAC(1);
- in accordance with subsection 269TACD(1), countervailable subsidies have been received by SCEA in respect of the goods.

In ascertaining the variable factors, the Commissioner recommends that the Assistant Minister determine that:

- in accordance with subsection 269TAB(1)(c), having regard to all the circumstances of the exportation, the export price for the goods exported to Australia from China by SCEA during the review period have been ascertained using the price paid or payable for the goods by an intermediary as a vendor directly dealing with the importer, and are as set out in Confidential Appendix 1;
- in accordance with section 269TAC(2)(c), the normal value of the goods exported to Australia from China by SCEA is the sum of:
    - SCEA's cost of production of the goods in China as set out in Confidential Appendix 2, and
    - on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in China, SCEA's selling, general and administrative (SG&A) costs associated with the sale, and an amount for profit, as set out in Confidential Appendix 4, as adjusted

in accordance with subsection 269TAC(9), as set out in Confidential Appendix 4, to ensure that the normal value of the goods so ascertained is properly comparable with the export price of the goods;

- having applied subsection 269TACB(2)(a) and in accordance with subsection 269TACB(4), the dumping margin in respect of the goods exported to Australia from China by SCEA is the difference between the weighted average export prices of the goods over the review period and the weighted average of corresponding normal values over that period as set out in Confidential Appendix 5;
- in accordance with subsection 269TACD(1), the amount of the countervailable subsidy received by SCEA in respect of the goods, expressed as a percentage of the ascertained export price, is 1.0 per cent, as set out in Confidential Appendix 6.

The Commissioner recommends that the Assistant Minister have regard to:

- in accordance with subsection 8(5BA) of the Dumping Duty Act, in relation to the goods exported to Australia from China by SCEA, the desirability of specifying a method such that the sum of the amounts outlined in subsections 8(5BA)(c), (d) and (e) do not exceed the NIP;
- in accordance with subsection 10(3D) of the Dumping Duty Act, in relation to interim countervailing duty in respect of the goods exported to Australia from China by SCEA, the desirability of fixing the amount of interim countervailing duty in respect of the goods such that the sum of the amounts outlined in subsections 10(3D)(a), (b) and (c) do not exceed the NIP.

If the Assistant Minister accepts these recommendations, the Assistant Minister must declare, by notice published on the Commission's website that:

- in accordance with subsection 269ZDB(1)(a)(iii), for the purposes of the Act and the Dumping Duty Act and with effect from the date specified in the declaration, the dumping duty notice and the countervailing duty notice are taken to have effect, in relation to SCEA, as if different variable factors (as set out in Confidential Appendices 1, 4, 6 and 7) had been fixed in respect of SCEA relevant to the determination of duty.

9 APPENDICES AND ATTACHMENTS

Confidential Appendix 1	Export sales
Confidential Appendix 2	Domestic and export CTMS
Confidential Appendix 3	Domestic sales and profit
Confidential Appendix 4	Normal value calculations
Confidential Appendix 5	Dumping margin calculations
Confidential Appendix 6	Subsidy margin calculations
Confidential Appendix 7	USP and NIP calculations