PUBLIC RECORD

Australian Government
Department of Industry, Innovation and Science

Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS NO. 461

REVIEW OF ANTI-DUMPING MEASURES APPLYING TO

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

GUANGDONG YINGAO KITCHEN UTENSILS CO. LTD

August 2018

CONTENTS

ABBREVIATIONS

304 SS CRC	304 grade 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 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*
EPR	electronic public record
Estonia	Republic of Estonia
FOB	Free on Board
GAAP	generally accepted accounting principles
GOC	Government of China
the goods	certain deep drawn stainless steel sinks, being the goods the subject of the application (also referred to as the goods under consideration, or sinks)
ICD	interim countervailing duty
IDD	interim dumping duty
Manual	*Dumping and Subsidy Manual*
MEPS	MEPS International Pty Ltd
NIP	non-injurious price
the notices	collectively, the dumping duty notice and countervailing duty notice applying to the goods
then Parliamentary Secretary	the then Parliamentary Secretary to the then Minister for Industry and Science
Platts	S&P Global Platts
the Regulation	*Customs (International Obligations) Regulation 2015*
REP 238	*Anti-Dumping Commission Report No. 238*
REP 352	*Anti-Dumping Commission Report No. 352*
REP 459	*Anti-Dumping Commission Report No. 459*

REQ	response to the exporter questionnaire
review period	1 January 2017 to 31 December 2017
SCEA	Shengzhou Chunyi Electrical Appliances Co. Ltd.
SEF	statement of essential facts
Tasman	Tasman Sinkware Pty Ltd
USP	unsuppressed selling price
Yingao	Guangdong Yingao Kitchen Utensils Co. Ltd
Zhuhai Grand	Zhuhai Grand Kitchenware Co., Ltd

1 SUMMARY

1.1 Introduction

This statement of essential facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Assistant Minister for Science, Jobs and Innovation (the Assistant Minister)[1] in relation to a review of the anti-dumping measures applying to certain deep drawn stainless steel sinks (the goods, or sinks) exported to Australia from the People's Republic of China (China) by Guangdong Yingao Kitchen Utensils Co. Ltd (Yingao).

This review of measures is in response to an application from Yingao for a review of the anti-dumping measures in the form of a dumping duty notice and a countervailing duty notice (together, the notices) applying to the goods exported to Australia from China, in so far as the anti-dumping measures affect Yingao.

The application for review is based on a change in the variable factors[2] relevant to the taking of the anti-dumping measures in relation to exports of the goods to Australia from China by Yingao. In this case the relevant variable factors are the export price, normal value, non-injurious price (NIP) and amount of countervailable subsidy. Yingao claims that the export price, normal value and the amount of countervailable subsidy received on the goods have changed from the time when the original investigation was conducted.

1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)[3] sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for review of anti-dumping measures.

Division 5 empowers the Commissioner to reject or not reject an application for review of anti-dumping measures. If the Commissioner does not reject the application, he is required to publish a notice indicating that it is proposed to review the measures covered by the application.[4] The Commissioner must, within 110 days after the publication of the notice or such longer period as the Assistant Minister allows, place on the public record a statement of the essential facts (this SEF) on which the Commissioner proposes to base his recommendation to the Assistant Minister in relation to the review of measures.[5]

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1 On 20 December 2017, the Prime Minister appointed the Parliamentary Secretary to the Minister for Jobs and Innovation as the Assistant Minister for Science, Jobs and Innovation. For the purposes of this review, the Minister is the Assistant Minister for Science, Jobs and Innovation.

2 Subsection 269T(4E) of the *Customs Act 1901*.

3 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.

4 Subsection 269ZC(4).

5 Subsection 269ZD(1).

1.3 Proposed recommendation

The Commissioner proposes to recommend to the Assistant Minister that the notices have effect in relation to Yingao as if different variable factors had been ascertained.

1.4 Final report

The Commissioner's final report and recommendations must be provided to the Assistant Minister by **15 September 2018** or within such longer period as the Assistant Minister allows.[6]

[6] Subsection 269ZDA(1). As per Anti-Dumping Notice No. 2017/10, the Assistant Minister has delegated his powers under subsection 269ZHI(3) to the Commissioner.

2 BACKGROUND

2.1 Existing measures

On 26 March 2015, the then Parliamentary Secretary to the then Minister for Industry and Science (the then Parliamentary Secretary) decided to accept the Commissioner's recommendations in the original investigation (as reported in *Anti-Dumping Commission Report No. 238* (REP 238)) into the alleged dumping and subsidisation of deep drawn stainless steel sinks exported to Australia from China. Interested parties were advised of the outcome in Anti-Dumping Notice (ADN) No. 2015/41. On 16 October 2015, following a 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 the anti-dumping measures applying to deep drawn stainless steel sinks exported to Australia from China by Shengzhou Chunyi Electrical Appliances Co. Ltd. (SCEA) following an application lodged by Milena Australia Pty Ltd (Milena), an importer of deep drawn stainless steel sinks in Australia. The then Assistant Minister decided to accept the Commissioner's recommendations (as reported in *Anti-Dumping Commission Report No. 352* (REP 352)) that the variable factors relating to SCEA had changed. Interested parties were advised of this outcome in ADN No. 2016/107 on 21 November 2016.

Yingao sought a review of the decision by the ADRP, which was initiated on 5 January 2017. As a result of its 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.

On 21 December 2017, the Commissioner initiated a review of the anti-dumping measures applying to deep drawn stainless steel sinks exported to Australia from China by SCEA following an application lodged by Milena. The Assistant Minister decided to accept the Commissioner's recommendations (as reported in *Anti-Dumping Commission Report No. 459* (REP 459)) that the variable factors relating to SCEA had changed. Interested parties were advised of this outcome in ADN No. 2018/75 on 15 June 2018.

2.2 The current review application

On 23 January 2018, an application was lodged by Yingao requesting a review of the anti-dumping measures as they apply to the goods exported to Australia from China by Yingao. In its application, Yingao claims that certain variable factors relevant to the taking of the anti-dumping measures as they apply to the goods exported by Yingao have changed.

The Commissioner examined the application and decided not to reject the application. On 12 February 2018, the Commissioner initiated a review of the anti-dumping measures in respect of the goods as they apply to Yingao.

Consideration Report No. 461 was published on the Anti-Dumping Commission (the Commission) website detailing the reasons for not rejecting the application. Notification of the initiation of the review was made in ADN No. 2018/24, which was published on the Commission website on 12 February 2018.

The review period for the purpose of this review is 1 January to 31 December 2017. The review is limited to examining whether the variable factors, relevant to the taking of the anti-dumping measures as they affect Yingao, have changed.

As a result of the original investigation (REP 238) Yingao is currently subject to the 'uncooperative and all other exporters' *ad valorem* rate of interim dumping duty (IDD) of 46.2 per cent and interim countervailing duty (ICD) of 6.4 per cent.[7]

2.3 Review process

If anti-dumping measures have been taken in respect of certain goods, an affected party may consider it appropriate for those measures, as they affect a particular exporter or exporters generally, to be reviewed. Accordingly, the affected party may apply for,[8] or the Assistant Minister may request that the Commissioner conduct,[9] a review of those measures if one or more of the variable factors has changed.

The Assistant Minister may initiate a review at any time. However, a review application must not be lodged earlier than 12 months after publication of the dumping duty notice or countervailing duty notice or the notice(s) declaring the outcome of the last review of the dumping or countervailing duty notice.[10]

If an application for a review of anti-dumping measures is received and not rejected, the Commissioner has up to 155 days, or such longer time as the Assistant Minister may allow, to conduct a review and report to the Assistant Minister on the review of the anti-dumping measures.[11]

During the course of a review, the Commissioner will examine whether the variable factors have changed. Variable factors in this particular review are a reference to:

- the export price;
- the normal value;
- the amount of countervailable subsidy received in respect of the goods; and
- the NIP.

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7 ADN No. 2015/41.

8 Subsection 269ZA(1).

9 Subsection 269ZA(3).

10 Subsection 269ZA(2)(a). The dumping duty notice and countervailing duty notice last published occurred on 21 November 2016, which was more than 12 months prior to the application lodged by Yingao in respect of the current review.

11 Subsection 269ZDA(1).

Within 110 days of the initiation of a review, or such longer time as the Assistant Minister may allow, the Commissioner must place on the public record a SEF on which he proposes to base his recommendations to the Assistant Minister concerning the review of the anti-dumping measures.[12] In making recommendations in his final report to the Assistant Minister, the Commissioner must have regard to:

- the application for review of the anti-dumping measures;
- any submission relating generally to the review of the anti-dumping measures to which the Commissioner has had regard for the purpose of formulating the SEF;
- this SEF; and
- any submission made in response to this SEF that is received by the Commissioner within 20 days of it being placed on the public record.[13]

The Commissioner may also have regard to any other matter considered to be relevant to the review.[14]

At the conclusion of the review, in respect of the notices, the Commissioner must provide a final report that makes a recommendation to the Assistant Minister that the notices:[15]

- remain unaltered; or
- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.

Following the Assistant Minister's decision, the Assistant Minister must give notice of the decision.[16]

2.4 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Assistant Minister. The SEF represents an important stage in the review as it informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note that the SEF may not represent the final views of the Commissioner. The final report will recommend whether or not the notices should be varied, and the extent of any interim duties that are, or should be, payable.

Interested parties are invited to lodge written submissions in response to this SEF no later than the close of business on **21 August 2018**.

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[12] Subsection 269ZD(1).

[13] Subsection 269ZDA(3)(a).

[14] Subsection 269ZDA(3)(b).

[15] Subsection 269ZDA(1)(a).

[16] Subsection 269ZDB(1).

The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Assistant Minister.[17] The Commissioner must report to the Assistant Minister on or before **15 September 2018**.

Submissions should preferably be emailed to investigations1@adcommission.gov.au. Alternatively, submissions may be sent to fax number +61 3 8539 2499, or posted to:

The Director – Investigations 1
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record. A guide for making submissions is available on the Commission website, www.adcommission.gov.au.

The electronic public record (EPR) contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. The EPR can be viewed online at www.adcommission.gov.au.

Documents on the EPR for this review should be read in conjunction with this SEF.

17 Subsection 269ZDA(4).

3 THE GOODS

3.1 Findings

The Commissioner finds that Yingao did not export the goods to Australia during the review period. The Commissioner finds that Yingao sold like goods to third countries and on the domestic market during the review period.

3.2 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.

3.2.1 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.

3.2.2 Tariff classification

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

3.3 The goods exported by Yingao

Based on an examination of the Australian Border Force (ABF) import database and verification of Yingao sales during the review period, the Commission found that Yingao did not export the goods to Australia during the review period.[18] During the review period, Yingao did export like goods to 14 third countries and sold like goods on the domestic Chinese market. The Commission examined source documents provided by Yingao and found that these export and domestic products:

- ranged between 14 and 69 litres in volume;
- had one or two bowls;
- were with or without drainer boards; and
- had various stainless steel grades and gauges.

[18] Refer verification report (document no. 7 on the public record) for further details.

The Commission is satisfied that these export and domestic sales of deep drawn stainless steel sinks are relevant to the goods description above and are therefore like goods.

4 EXPORTER INFORMATION

4.1 Findings

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

4.2 Exporter questionnaire

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

4.2.1 Accuracy, relevance and completeness of information supplied by Yingao

Based on a risk assessment of Yingao's circumstances, including Yingao's Australian export volume of the goods prior to and during the review period, the Commission elected not to conduct an on-site verification visit at Yingao's premises.

The verification report[19] outlines the verification team's findings on the accuracy, relevant and completeness of the information supplied by Yingao in relation to:

- domestic and third country sales data;
- previous Australian sales;
- CTMS data; and
- data relevant for making adjustments to the normal value.

The Commission is satisfied as to the accuracy, relevance and completeness of the data provided by Yingao during the desktop verification and upon which the findings of this review are based.

[19] Document no. 7 on the public record.

5 EXPORT PRICE AND NORMAL VALUE

5.1 Findings

The Commissioner finds that the variable factors of the ascertained export price and the ascertained normal value relevant to the taking of anti-dumping measures (in the form of a dumping duty notice) applying to deep drawn stainless steel sinks exported to Australia from China by Yingao have changed.

5.2 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.

As such, the application of subsection 269TAB(1) would require Yingao to have exported the goods to Australia.

The Commission has found that Yingao did not export deep drawn stainless steel sinks to Australia from China during the review period (1 January to 31 December 2017).[20] The Commission therefore considers there is insufficient information available to ascertain the export price in accordance with subsection 269TAB(1) for the review period.

Consideration of subsection 269TAB(2A)

As the Commission has found that Yingao did not export the goods to Australia during the review period, the Commission has considered whether the requirements of subsection 269TAB(2A) have been met, and therefore whether Yingao's export price should be determined under subsection 269TAB(2B).

Subsection 269TAB(2A) specifies that the export price of the goods exported to Australia may be determined by the Minister in accordance with subsection 269TAB(2B) if:

a) the price is being ascertained in relation to an exporter of those goods (whether the review is of the measures as they affect a particular exporter of those goods, or as they affect exporters of those goods generally); and
b) the Minister determines that there is insufficient or unreliable information to ascertain the price due to an absence or low volume of exports of those goods to Australia by that exporter having regard to the following:
    i) previous volumes of exports of those goods to Australia by that exporter;
    ii) patterns of trade for like goods;
    iii) factors affecting patterns of trade for like goods that are not within the control of the exporter.[21]

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[20] As set out in the verification report (document no. 7 on the public record).

[21] As Yingao did not export the goods to Australia during the review period, and as provided by subsection 269TAB(2C), the Commission has deemed such exports to have occurred for the purposes of applying subsections 269TAB(2A) and (2B).

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

Based on the Commission's analysis of the Australian sales data provided by Yingao and the ABF import database, Yingao exported the goods to Australia during the investigation period of the original investigation (REP 238), being 1 January to 31 December 2013. Yingao exported the goods to Australia from the start of the original investigation period (1 January 2013) to the end of 2016, being just prior to the start of the review period. Yingao did not export the goods to Australia during the review period.

The Commission's analysis is outlined in **Confidential Attachment 1 – Previous export volumes**.

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

Yingao exported like goods to Australia between January 2013 and the end of 2016. Yingao did not export like goods to Australia during the review period.

During the original investigation period (1 January to 31 December 2013), imports of like goods from China comprised 81 per cent of the total volume of stainless steel sinks imported into Australia (refer Figure 1 below).

The trend for total imports of like goods between 2012 and 2017 has been relatively consistent, with cyclical demand resulting in spikes around Q3 (July to September) and Q4 (October to December) of each calendar year. Similar cyclical patterns are observed in relation to imports from China, and in relation to imports from all other countries. The total import volume of the goods during the review period is slightly higher (3.5 per cent) than the original investigation period.

The market share of imports from China relative to all other countries is observed to be fairly consistent during the period 2012 to 2017. Imports from China comprised 81 per cent of total imports during the original investigation period and 77 per cent during the review period.

The Commission notes that IDD and ICD were imposed on the goods imported from China on 26 March 2015.[22] Interim dumping duties applied to all exporters and suppliers of the goods from China, and interim countervailing duties applied to all exporters and suppliers with the exception of two entities. Following the imposition of measures, Chinese import volumes did not spike in Q3 and Q4 of 2015 to the same extent as those from all other countries. However, the market share of Chinese imports remained significant and Chinese imports trended upwards following the imposition of measures. As such, the Commission considers that the IDD and ICD measures imposed on 26 March 2015 did not significantly impact the total volume of imports from China.

Given the above, the Commission considers that imports of the goods from China have remained significant from 2012 to 2017 and that these imports have demonstrated a relatively consistent trend during that period. As such, the Commission considers that Yingao's absence of exports during the review period does not pertain to a general lack of exports or low volumes of exports to Australia from China.

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22 Public record of REP 238.

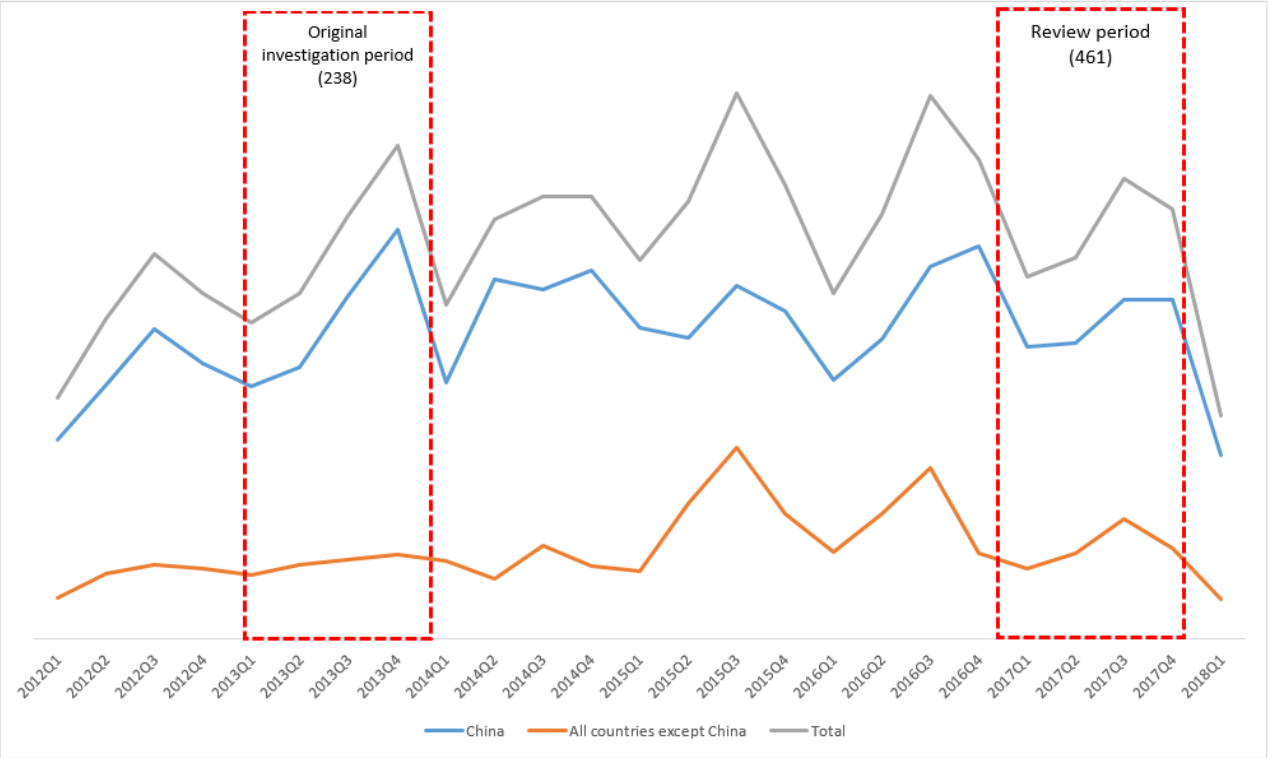

Figure 1: Imports of deep drawn stainless steel sinks (1 January 2012 – 31 March 2018)

(Source: ABF import database)

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

The Commission notes that the explanatory memorandum[23] to the *Customs Amendment (Anti-Dumping Measures) Bill 2017* identifies factors that may affect patterns of trade for like goods that are not within the control of the exporter. Such factors may include supply disruptions or natural events (such as flood, drought or fire) that affect production levels.

The Commission has found that Yingao manufactured and sold like goods on the domestic market and to third countries during the review period. The Commission considers that this indicates that there do not appear to be any factors (such as natural events) that are not within the control of Yingao that are affecting, or have affected, its trade for like goods. Further, the Commission does not have any information before it which suggests that there were factors affecting patterns of trade outside of Yingao's control.

Preliminary finding – subsection 269TAB(2A)

The Commission considers that Yingao has previously exported sinks to Australia, and that it exported the goods up until the commencement of the review period. Imports of sinks from China have remained significant and had relatively consistent trends between 2012 and 2017. As such, the Commission considers that Yingao's absence of exports during the review period does not pertain to a general lack of exports or low volumes of exports to

23 Refer page 31 of the explanatory memorandum to the *Customs Amendment (Anti-Dumping Measures) Bill 2017*.

Australia from China. The Commission is not aware of any factors affecting the patterns of trade that are not within the control of Yingao.

Having regard to the above, the Commission considers that, in accordance with subsection 269TAB(2A)(b), there is insufficient information to ascertain the export price due to an absence of exports of the goods to Australia by Yingao. The Commission therefore considers it appropriate to ascertain the export price in relation to Yingao under subsection 269TAB(2B).

Consideration of subsection 269TAB(2B)

In accordance with subsection 269TAB(2B), the Commission can determine the export price of the goods having regard to any of the following:

- the export price for the goods exported to Australia by Yingao established in accordance with subsection 269TAB(1) for a decision of a kind mentioned in subsection 269TAB(2D);[24]
- the price paid or payable for like goods sold by Yingao in arms length transactions for exportation from China to a third country determined to be an appropriate third country;[25] or
- the export price for like goods exported to Australia from China by another exporter or exporters established in accordance with subsection 269TAB(1) for a decision mentioned in subsection 269TAB(2D).[26]

Previous export price - subsection 269TAB(2B)(a)

The export price for the goods exported to Australia by Yingao in the original investigation (REP 238), where the decision to publish a notice under sections 269TG and 269TJ was made, was established in accordance with subsection 269TAB(3).[27]

Subsection 269TAB(2B)(a) requires that the export price was established in accordance with subsection 269TAB(1). Therefore, the Commission cannot determine the export price of the goods exported by Yingao in accordance with subsection 269TAB(2B)(a).

Export price to a third country - subsection 269TAB(2B)(b)

The Commission found that, during the review period, Yingao exported like goods to 14 countries across Asia, the Middle East, Europe and North America and Central America. Subsection 269TAB(2F) outlines that in determining whether a third country is an appropriate third country, the Minister may have regard to the following matters:

- whether the volume of trade from the country of export to the third country is similar to the volume of trade from the country of export to Australia; and

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[24] Subsection 269TAB(2B)(a).

[25] Subsection 269TAB(2B)(b).

[26] Subsection 269TAB(2B)(c).

[27] The decision to publish a notice under subsection 269TG(1) or (2) is a decision mentioned in subsection 269TAB(2D)(a)(i). The decision to publish a notice under subsection 269TJ(1) or (2) is a decision mentioned in subsection 269TAB(2D)(a)(ii).

- whether the nature of the trade in goods concerned between the country of export and the third country is similar to the nature of trade between the country of export and Australia.

Nature of trade – Model analysis

Under subsection 269TAB(2F)(b), the Commission may have regard to the similarity in the nature of the trade in goods between China and third countries, and China and Australia. The Commission has reliable information concerning the nature of trade of like goods exported by Yingao to third countries and has therefore limited its analysis to Yingao's exports of like goods.

The Commission considers that, if ascertaining the export price under subsection 269TAB(2B)(b), a significant factor in assessing the appropriateness of a third country is the similarity of the models of like goods exported to the third country during the review period to Yingao's exports of the goods to Australia from 2013 to 2016.[28] Yingao's previous exports to Australia over a long period of time (2013 to 2016) did not vary significantly by model from year to year. In these circumstances, the Commission considers that Yingao's exports to third countries of similar models is a relevant factor for the Commission to take into account when selecting an appropriate third country under subsection 269TAB(2B)(b).

Based on this comparison, the Commission found that Yingao sold like goods to four countries for which its exported models were similar to models of sinks previously exported to Australia by Yingao from 2013 to 2016. These countries were Russia, Ukraine, Greece and the Republic of Estonia (Estonia).

The Commission's model analysis is at **Confidential Attachment 2**.

Volume analysis

Under subsection 269TAB(2F)(a), the Commission may have regard to whether the volume of trade from China to the third country is similar to the volume of trade of from China to Australia. Although subsection 269TAB(2F)(a) is not limited to a consideration of like goods, the Commission has reliable information concerning the volume of trade of like goods by Yingao and has therefore limited its analysis to sinks exported by Yingao.

The Commission compared the volume of like goods exported by Yingao to third countries with the volume of like goods previously exported by Yingao to Australia. While previous export volume trends of like goods on an annual basis to Australia were variable, the Commission found that the export volumes to Russia, Ukraine, Greece and Estonia were comparable to previous exports of like goods to Australia.

Given the significance of product characteristics for deep drawn stainless steel sinks, the Commission then also compared the volume of similar models of like goods exported to third countries by Yingao with the volumes previously exported to Australia. While previous export volumes on an annual basis to Australia were variable, the Commission found that

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[28] The findings and data relevant to Yingao's previous Australian sales of the goods are contained in the verification report (document no. 7 on the public record).

the export volume of these relevant models to Russia is closest to the volumes previously exported to Australia.

The Commission's volume analysis is at **Confidential Attachment 2**.

Summary of model and volume analysis

The Commission considers that the factors of model and volume comparability are significant with respect to deep drawn stainless steel sinks. This is because there are numerous models and substantial variation in price across models; therefore, it is important to ensure that the models and their volumes are comparable when assessing an appropriate third country.

The Commission considers Yingao's exports to Russia were closest in model and volume factors to its previous exports to Australia, and therefore Russia is an appropriate third country under subsection 269TAB(2B)(b).

Other nature of trade factors

In addition to model and volume factors, the Commission has analysed the following additional factors to determine whether Russia is an appropriate third country under subsection 269TAB(2B)(b):

- level of trade and sales terms of exports of like goods to Russia by Yingao;
- domestic production of like goods in Russia; and
- import tariffs in Russia on like goods.

Level of trade and terms of sale

The Commission found that in comparing Yingao's exports of like goods to Russia with its previous exports of the goods to Australia, the level of trade and terms of sale are identical or highly similar.

Domestic production of like goods

The Commission is aware of at least one manufacturer of deep drawn stainless steel sinks in Russia. Therefore, similar to Australia, Russia is considered to have domestic production of like goods.

Import tariffs

The Commission found that general customs duty in Russia on imports of deep drawn stainless steel sinks from China range from 7.5 to 10 per cent. In Australia, the duty rate for imports of sinks from China is five per cent. As such, the Commission considers that the general customs duty for Russia and Australia are reasonably similar for imports of like goods.

The Commission has also found that no anti-dumping measures existed on imports of deep drawn stainless steel sinks into Russia during the review period.

The Commission's analysis is at **Confidential Attachment 3**.

Export price from another exporter or exporters - subsection 269TAB(2B)(c)

A decision under sections 269TG and 269TJ in relation to REP 238 was published on 26 March 2015, which is more than two years[29] before the Commissioner published a notice (under subsection 269ZC(4)) in relation to the initiation of this review.[30]

On 21 November 2016 and 15 June 2018, respectively, decisions under subsection 269ZDB(1) in relation to REP 352 and REP 459 were made as they related to a single exporter, Shengzhou Chunyi Electrical Appliances Co. Ltd (SCEA). In those reviews, the export prices for SCEA were established under subsection 269TAB(1), and the decisions under subsection 269ZDB(1) were made less than two years[31] before the Commissioner published a notice (under subsection 269ZC(4)) in relation to the initiation of this review.[32]

However, the Commission considers that there could be significant challenges in making the necessary adjustments for product specification differences between SCEA's and Yingao's products, which would render the use of SCEA's exports as being less reliable. Specifically, the product and bowl sizes between SCEA's and Yingao's exports is substantially different as a result of different end uses. The Commission does not have information before it to reasonably adjust for these differences.

As such, the Commission elected not to determine the export price of the goods exported to Australia by Yingao in accordance with subsection 269TAB(2B)(c) using the export price for like goods exported by another exporter or exporters.

Preliminary finding – subsection 269TAB(2B)

For the reasons set out above, the Commission cannot determine the export price of the goods exported to Australia by Yingao under subsection 269TAB(2B)(a) and elects not to determine the export price under 269TAB(2B)(c) for the reasons outlined.

The Commission has found that Yingao sold like goods to third countries in arms length transactions during the review period, and that Russia is an appropriate third country in accordance with subsection 269TAB(2B)(b).[33] This is based on the comparison between

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[29] As stipulated in subsection 269TAB(2E), which specifies that a decision referred to in subsection 269TAB(2D) must be made in the prescribed time period.

[30] Refer ADN No. 2018/24.

[31] As stipulated in subsection 269TAB(2E), which specifies that a decision referred to in subsection 269TAB(2D) must be made in the prescribed time period.

[32] Refer ADN No. 2018/24.

[33] The Commission has found that in relation to Yingao's sales of like goods to Russia during the review period, the customers were unrelated and no consideration payable other than price were identified. As

exports of like goods by Yingao to Russia and its previous exports of the goods to Australia with respect to the key factors of model and volume comparability. Further, Russia is viewed as being an appropriate third country based on consideration of the additional factors of domestic production, level of trade and terms of sale, and tariff rates. In accordance with subsection 269TAB(2B)(b), the export price is the price paid or payable for similar models[34] of like goods sold by Yingao in arms length transactions for exportation from China to Russia. The export price was calculated at Free on Board (FOB) terms.

The Commission did not make adjustments to Yingao's exports to Russia (on which the export price is based)[35] for the following reasons:

- Yingao exported sinks to Russia during the review period, therefore, there is information available in relation to the price paid or payable for like goods sold by Yingao during the period of review; and
- Yingao's exports of sinks to Russia have comparable product characteristics that were found to affect price (including the product dimensions, number of bowls, bowl depth, stainless steel grade and stainless steel gauge) to the deep drawn stainless steel sink products sold previously by Yingao to the Australian market.

As such, the Commission considers that the similar models of like goods exported to Russia used to ascertain the export price reasonably reflect what the export price would have been had there not been an absence of exports of the goods by Yingao during the review period.

5.3 Normal value

In determining the normal value of the goods exported by Yingao, the Commission first assessed whether the normal value could be ascertained under subsection 269TAC(1). 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.

The Commission found that Yingao sold like goods on the domestic Chinese market during the review period at arms length transactions. The Commission assessed like goods based on models with the following characteristics that the Commission found to affect price:

- product dimensions and design;
- number bowls;
- bowl dimensions;
- stainless steel grade; and
- stainless steel thickness.

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such, the Commission considers exports of like goods to Russia during the review period were arms length transactions.

[34] Similar models refer to the like goods exported by Yingao that were found to be similar to the models previously exported to Australia by Yingao.

[35] In accordance with subsection 269TAB(2G).

Since the publication of the verification report the Commission has re-assessed the model matching criteria.[36]

Specifically, the Commission found that within the product dimensions and design characteristics, the feature relating to orientation of the sink, where applicable, does not affect the price of like goods. Therefore, this feature, where applicable, has been removed from the model matching criteria.

The Commission notes that subsection 269TAC(2)(a)(ii) states that where the Minister is satisfied that because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection 269TAC(1), the normal value of the goods exported to Australia cannot be ascertained under subsection 269TAC(1). In REP 238, the Commissioner determined that, during that investigation period, there was not a situation in the market for deep drawn stainless steel sinks in China such that sales in that market are not suitable for use in determining normal value under subsection 269TAC(1).[37] The Commission has no evidence that this situation has changed and therefore finds that, for the review period, there was not a market situation in the deep drawn stainless steel sinks market that rendered domestic selling prices of like goods unsuitable for determining normal values under 269TAC(1).

The Commission then considered, in accordance with subsection 269TAC(1), whether Yingao sold like goods on the domestic market in the ordinary course of trade (OCOT), as required by subsection 269TAAD. The Commission first examined Yingao's cost of production in the context of OCOT under subsection 269TAAD.

In determining whether substantial quantities[38] of like goods were sold in the OCOT, subsection 269TAAD(4)(a) states that the cost of goods is worked out by adding the amount determined by the Minister to be the cost of production or manufacture of those goods in the country of export. Subsection 269TAAD(5) requires that the amount determined for the purposes of subsection 269TAAD (4)(a) be worked out in such manner, and taking account of such factors, as the regulations (being the *Customs (International Obligations) Regulation 2015* (the Regulation)) provide.

Subsection 43(2) of the Regulation states that if an exporter or producer of like goods keeps records relating to the like goods, and the records:

(i) are in accordance with generally accepted accounting principles in the country of export; and

(ii) reasonably reflect competitive market costs associated with the production or manufacture of like goods;

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36 Document no. 7 on the public record.

37 In REP 238 at section 6.7 (document no. 102 on the public record).

38 As referred to in subsections 269TAAD(1) and (2).

the Minister must work out the amount by using the information set out in the records.

The Commission is satisfied that Yingao's records are kept in accordance with the GAAP in China.[39] However, in REP 238 the Commissioner found 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 on the basis that prices in China are affected by Government of China (GOC) influences in the iron and steel industry.[40] The Commission has no evidence that this situation has changed and therefore finds that cost of 304 SS CRC in Yingao's records does not reasonably reflect a competitive market cost.[41]

In REP 238, the Commission found that an exporter of the goods, Zhuhai Grand Kitchenware Co., Ltd (Zhuhai Grand), sold like goods on the domestic market in arms length transactions. With respect to Zhuhai Grand, the Commission replaced the stainless steel cost with a competitive market benchmark price. Following this cost replacement, the Commission was able to undertake an OCOT test under subsection 269TAAD as it was satisfied that Zhuhai Grand's cost of production reasonably reflected competitive market costs. The Commission was satisfied that Zhuhai Grand sold like goods on the domestic market in arms length transactions in the OCOT in substantial quantities, and therefore the Commission worked out the normal value for Zhuhai Grand under subsection 269TAC(1).[42]

Given the Commission's finding that Yingao's costs for the raw material used to manufacture like goods did not reasonably reflect competitive market costs, the Commission considers that the stainless steel cost in Yingao's records can be adjusted to be a competitive market cost by reference to a competitive stainless steel market benchmark price. Following the adjustment to Yingao's raw material cost, the Commission considers it is able to assess OCOT under section 269TAAD for the purposes of determining a normal value under subsection 269TAC(1) using Yingao's raw material costs adjusted to reasonably reflect competitive market costs. This is consistent with the Commission's approach in REP 238.

5.3.1 Application of a competitive market benchmark

In REP 238, the Commissioner considered how best to determine what a competitive market substitute price for the input of 304 SS CRC 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

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39 Subsection 43(2)(i) of the Regulation.

40 In REP 238 at section 6.9 (document no. 102 on the public record).

41 Subsection 43(2)(ii) of the Regulation.

42 Zhuhai Grand Kitchenware Co Ltd Exporter Verification Report (document no. 67 on the public record).

using the monthly reported MEPS North American and European prices (excluding the Asian price).[43]

For REP 352 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 these data by the Commission.[44] The Commission notes that Yingao provided data from MEPS relevant to 304 SS CRC during the review period. Given the absence of authority by MEPS for the Commission to use the data, the Commission sought alternative sources of benchmark prices for 304 SS CRC that were based on a relevant period of time.

The Commission sought to replicate the original benchmark price method, 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 Platts prices are suitable for use as benchmark prices in this review, and selected the following three price series:

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

The Commission applied the same method to adjust Yingao's costs as was applied in the original investigation.[45] Where an adjustment to the benchmark price for inland transport (delivery from the mill to Yingao) and slitting costs (where Yingao 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.

The Commission's benchmark calculations are at **Confidential Appendix 8**.

Yingao's domestic and export CTMS, including stainless steel cost adjustments where required, are at **Confidential Appendix 2**.

For the other costs of producing like goods sold on the domestic market (i.e. labour, overheads, depreciation, accessories and packaging), the Commission used the information set out in Yingao's records, as the Commission found that those costs reasonably reflect competitive market costs associated with the production of like goods.

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[43] REP 238 at section 6.10.1 and at Non-Confidential Appendix 8 (document no. 102 on the public record).

[44] Review of the anti-dumping measures insofar as they affect exports of the goods by SCEA.

[45] REP 238 at section 6.10.2 (document no. 102 on the public record).

5.3.2 Ordinary course of trade

Given that the Commission has found that Yingao's raw material cost, once adjusted to be a competitive market cost (refer chapter 5.3.1 above), enables an assessment of OCOT under subsection 269TAC(1), the Commission then assessed whether Yingao sold like goods on the domestic market in arms length transactions in the OCOT in *sufficient quantities*, in accordance with subsection 269TAC(2)(a)(i).[46] Section 269TAAD provides that if like goods are sold in the country of export at a price less than the cost of such goods, and are unrecoverable within a reasonable period, then they are taken not to have been sold in the OCOT.

The Commission compared the revenue (i.e. net sales value) for each domestic sale of like goods to the corresponding quarterly domestic CTMS (with stainless steel cost adjusted based on a competitive market benchmark in accordance with subsection 43(2) of the Regulation) to test whether those sales were profitable. Where the volume of unprofitable sales exceeded 20 per cent for a particular model, the Commission tested the recoverability of the unprofitable sales by comparing the revenue for each transaction to the corresponding weighted average domestic CTMS (with raw materials adjusted per the above) over the review period. Those sales found to be unrecoverable were considered not to be in the OCOT.

Suitability of domestic sales of like goods

Subsection 269TAC(2)(a)(i) provides that the normal value of the goods cannot be ascertained under subsection 269TAC(1) where there is an absence, or low volume, of sales of like goods in the market of the country of export. Subsection 269TAC(14) defines low volume as less than five per cent of the total volume of the exported goods under consideration.[47]

The Commission found that there was a sufficient volume of domestic sales of one of the models of like goods in the OCOT during the review period. For this model, the Commission considers that it is suitable to calculate normal value under subsection 269TAC(1).

For the second model, the Commission considers that Yingao sold a similar model on the domestic market for which there were sufficient volumes in the OCOT during the review period. The size of the similar model is slightly smaller than the exported model. The Commission therefore made a specification adjustment to the selling price of the similar model to account for the difference in product dimensions. To work out the specification adjustment, the Commission undertook a price comparison of models sold to Russia that only differed in terms of product dimensions. Other significant variables were also held constant, including level of trade, customer, quarter of sale, shipping and payment terms, and quantity. The Commission then applied the difference in price between the two models to reflect the difference in product size. Therefore, the Commission determined the normal value for this second model under subsection 269TAC(1) with a specification adjustment to account for the difference in product dimensions.

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[46] In accordance with subsection 269TAAD.

[47] Unless the Minister is satisfied that the volume is still large enough to permit a proper comparison.

The Commission's OCOT calculations are at **Confidential Appendix 3**.

5.3.3 Conclusion – Normal value

The Commission is satisfied that there are sufficient volumes of domestic sales of like goods by Yingao, for all models except one, that were in arms length transactions and at prices that were in the OCOT. In relation to the model with insufficient volumes, the Commission considers that Yingao sold a similar model on the domestic market for which there was sufficient volume in the OCOT. Therefore, the Commission is satisfied that prices paid in respect of domestic sales of like goods are suitable for assessing normal values under subsection 269TAC(1) with a specification adjustment to account for the difference in product characteristic.

The Commission considers that certain adjustments are necessary to ensure fair comparison of normal value with export price in accordance with subsection 269TAC(8):

Adjustment Type	Deduction/addition
Domestic credit	**Deduct** the cost of domestic credit
Export inland transport	**Add** the cost of inland transport to the port
Export handling and other fees	**Add** the cost of export port handling and customs declaration fees
Export credit	**Add** the cost of export credit
Non-refundable VAT	**Add** the non-refundable VAT amount of 8 per cent
Specification adjustment	For the model with insufficient volume in the OCOT

Table 1: Adjustments to normal value

The Commission's normal value calculations are at **Confidential Appendix 4**.

5.4 Dumping margin

Although not required for a review of variable factors, the Commission has nevertheless calculated a dumping margin for the review period by comparing the weighted average of export prices of the goods over the whole review period, with the weighted average of corresponding normal values over the whole of that period in accordance with subsection 269TACB(2)(a) of the Act.

The Commission calculated a dumping margin of **negative 5.6 per cent** at **Confidential Appendix 5**.

6 COUNTERVAILABLE SUBSIDIES

6.1 Finding

The Commission has found that, in respect of deep drawn stainless steel sinks exported to Australia from China by Yingao, the amount of countervailable subsidy received has changed.

6.2 Programs reviewed

In REP 238, the Commission found that countervailable subsidies had been received by exporters of the goods in relation to 23 subsidy programs. The Commission requested that Yingao provide information and data regarding these subsidy programs and any other subsidies it received during the review period as part of its response to the exporter questionnaire.

In REP 238, Yingao 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.

During examination of the information provided in Yingao's response to the exporter questionnaire, the Commission became aware that benefits were received under several new programs. The Commission identified 5 additional subsidy programs that were not previously investigated. As such, a total of 28 subsidy programs have been investigated in this review.

6.2.1 Summary of subsidy programs investigated in this review

Program Number[48]	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
Program 1	Raw Materials Provided by the Government at Less than Fair Market Value	Provision of goods	Yes
Program 2	Research & Development (R&D) Assistance Grant	Grant	Yes
Program 3	Grants for Export Activities	Grant	Yes
Program 4	Allowance to pay loan interest	Grant	Yes
Program 5	International Market Fund for Export Companies	Grant	Yes

[48] Program numbers 1 to 24 are the same as those investigated in REP 238.

Program Number[48]	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
Program 6	International Market Fund for Small and Medium-sized Export Companies	Grant	Yes
Program 8	Tax preference available to companies that operate at a small profit	Income Tax	Yes
Program 9	Award to top ten tax payer	Grant	Yes
Program 10	Assistance to take part in overseas trade fairs	Grant	Yes
Program 11	Grant for management certification	Grant	Yes
Program 12	Grant for certification of product patents	Grant	Yes
Program 13	Grant for inventions, utility models and designs	Grant	Yes
Program 14	Grant for international marketing	Grant	Yes
Program 15	Subsidy to electronic commerce	Grant	Yes
Program 16	Grant for overseas advertising and trademark registration	Grant	Yes
Program 17	Grant for overseas marketing or study	Grant	Yes
Program 18	Gaolan Port Subsidy	Grant	Yes
Program 19	Information development subsidy	Grant	Yes
Program 20	Foreign Trade Exhibition Activity Fund	Grant	Yes
Program 21	Zhuhai Technology Reform & Renovation Fund	Grant	Yes
Program 22	Zhuhai Support the Strong Enterprise Interests Subsidy	Grant	Yes
Program 23	Zhuhai Research & Development Assistance Fund	Grant	Yes
Program 24	Preferential Tax Policies for High and New Technology Enterprises	Income tax	Yes
Program 26*	Foreign Trade Fund	Grant	Yes
Program 27*	Technology Innovation	Grant	Yes
Program 28*	Higher-New Technology Enterprise	Grant	Yes
Program 29*	Patent Grant	Grant	Yes
Program 30*	Patent Grant Special Fund	Grant	Yes

Table 2 – Subsidy programs

** Denotes programs not previously countervailed in relation to deep drawn stainless steel sinks.*

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

Program 1 was found to be a countervailable subsidy in REP 238 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.[49]

No evidence was provided to the Commission that these conditions have changed and therefore finds that Program 1 is still a countervailable subsidy.

For the purposes of this review, Yingao provided data relating to its purchases of 304 SS CRC, which were relevant for the purposes of determining whether Yingao received a benefit under Program 1. In Yingao's CRC purchase listing, none of the manufacturers of the CRC purchased by Yingao during the review period were identified as being state-owned or state-invested enterprises. In relation to each of the manufacturers, Yingao provided information on the company structure and shareholding from the database of the National Enterprise Credit Information Publicity System. Based on the Commission's information and the information provided by Yingao, the Commission considers that none of the manufactures of the CRC purchased by Yingao during the review period were state-owned or state-invested enterprises.

Given the above, the Commission considers that Yingao did not receive a benefit under Program 1 during the review period.

6.2.3 Preferential income tax programs

Yingao claims that it did not receive a benefit under any of the relevant preferential income tax programs. The corporate income tax rate in China is 25 per cent. Yingao provided copies of its tax returns for financial years 2013 to 2017 showing that it paid the standard corporate income tax rate of 25 per cent.

Based on the information provided and the Commission's verification of Yingao's financial accounts, the Commission did not find any other information to suggest that Yingao received a benefit under a preferential income tax program. As such, the Commission considers that Yingao did not receive a benefit under any preferential income tax program.

6.2.4 Grant programs

Yingao claims that, during the review period, it did not receive a benefit under any of the grant programs found to be countervailable from REP 238.[50] However, Yingao claims that it did receive benefits under five other grant programs involving the direct transfer of funds by the government.[51] Yingao provided a list of these programs, as well as evidence of bank receipt.

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[49] REP 238 at Appendix 8, Part III(i)

[50] Refer REP 238 at Non-Confidential Appendix 8 (document no. 102 on the public record).

[51] Programs numbers 26 to 30 in Table 1 above.

During the verification of Yingao's data, the Commission verified these grant programs identified by Yingao to financial statements and source documents.[52] The Commission also found that Yingao did not receive any other benefit that may be relevant to the determination of countervailable subsidisation.

The Commission has assessed whether these five grant programs are subsidies and are specific, and therefore, whether they are countervailable subsidies, at **Appendix A** to this report. The method used to calculate the countervailable subsidy margin for each program is also outlined in **Appendix A**.

6.3 Countervailable subsidisation

The Commission has found that Yingao was in receipt of countervailable subsidies, in the form of five grant programs, during the review period. The Commission calculated a countervailable subsidy margin of **0.4 per cent** at **Confidential Appendix 6**.

The Commission has found that the amount of countervailable subsidy received has changed since last ascertained.

[52] Refer verification report (document no. 7 on the public record).

7 NON-INJURIOUS PRICE

7.1 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).[53]

Subsections 269TACA(a) and (c) 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 the export price and NIP, thereby giving effect to the lesser duty rule.

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

7.2 Assessment of USP and NIP

The *Dumping and Subsidy Manual* (Manual) states that the USP will normally be based upon the Australian industry's selling prices at a time unaffected by dumping.[54] 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. 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 dumping since 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.[55]

Consequently, the Commission proposes that for the purpose of this review, and consistent with REP 352 and REP 459, a USP will be determined based on Tasman's weighted average CTMS during the review period, plus an amount for profit. The Commission analysed the amount of profit achieved by Tasman in the 2008-09 financial year, which was a period unaffected by dumping. The Commission found that Tasman's sales of single bowl sinks in 2008-09 were not profitable, therefore no amount for profit has been included in the USP calculation.[56]

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

- importer profit;
- importer selling, general and administrative costs;
- inland transport costs;
- Australian customs duty and importation costs; and
- overseas freight and insurance.

For these costs, the Commission had regard to contemporaneous, verified importation costs from importers of deep drawn stainless steel sinks established in other cases.

The Commission has found that the NIP has changed since last ascertained. The Commission has also found that the NIP is higher than the normal value and therefore would not be the operative measure.

Details of the USP and NIP calculations are at **Confidential Appendix 7**.

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54 *Dumping and Subsidy Manual* at Section 23.2.

55 Ibid.

56 The Commission found that these were the most comparable models of like goods sold by Tasman relative to the products relevant for the determination of Yingao's export price.

8 FINDINGS AND PROPOSED RECOMMENDATIONS

8.1 Findings

The Commissioner has found that, in relation to exports to Australia of deep drawn stainless steel sinks from China by Yingao during the review period, the:

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

have all changed.

8.2 Proposed recommendation

The Commissioner proposes to recommend to the Assistant Minister that the notices in relation to Yingao have effect as if different variable factors had been ascertained.[57]

8.3 Effect of the review

With respect to conducting a review of measures, where the Commission has determined there is no dumping, or a negative dumping margin for a specific exporter, the Commission usually considers it appropriate to use a floor price method of calculating a dumping duty.

As the ascertained export price determined for Yingao is more than the ascertained normal value in this review, the Commission proposes that the anti-dumping measures applying to exports of deep drawn stainless steel sinks by Yingao take the form of the floor price duty method, pursuant to sub-regulation 5(4) of the *Customs Tariff (Anti-Dumping) Regulation 2013*. Under the floor price duty method, IDD is payable when the actual export price is less than the floor price. The floor price is the lesser of the ascertained normal value or the ascertained NIP.

The Commission proposes that ICD of 0.4 per cent apply to Yingao, calculated as a proportion of the export price of the goods subject to the countervailing duty notice.[58]

A summary of the variable factors as they apply to Yingao is at **Confidential Appendix 9**.

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57 Subsection 269ZDA(1)(a)(iii).

58 Subsection 10(3B)(a) of the Dumping Duty Act refers.

9 LIST OF APPENDICES

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Confidential Appendix 2	Domestic and export CTMS
Confidential Appendix 3	Domestic sales and profit
Confidential Appendix 4	Normal value calculations
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Australian Government
Department of Industry, Innovation and Science

Anti-Dumping Commission

Appendix A – Assessment of subsidy programs – Financial grants

Program number	Program description	Background	WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method used to calculate subsidy margin
26	Foreign Trade Fund	In its REQ, Yingao reported receiving a grant under this program.	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	The Commission is not aware of the eligibility criteria for this program.	The Commission considers that a grant provided under this program would be a financial contribution by the GOC, which involves a direct transfer of funds by the GOC to Yingao in China. The Commission further considers that a financial contribution under this program would be made in connection to the export of all goods of Yingao (including deep drawn stainless steel sinks). In accordance with subsection 269TACC(2), this financial contribution is considered to confer a benefit to Yingao's exports of deep drawn stainless steel sinks because it is a direct financial payment from the GOC. The Commission finds that this financial contribution to Yingao meets the definition of a subsidy under section 269T.	Due to the lack of evidence provided by Yingao, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable. In accordance with subsection 269TAAC(2)(a), the Commission considers that this subsidy is limited to, and predominantly benefits, particular enterprises that export. The specificity of the subsidy is not excepted by reference to subsection 269TAAC(3). Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.	In accordance with subsection 269TACD(1), the amount of the subsidy received in respect of the goods is the grant amount as reported by Yingao. The Commission allocated the amount of the grant to export sales of the goods as a proportion of sales revenue to determine a subsidy margin.

Program number	Program description	Background	WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method used to calculate subsidy margin
27	Technology Innovation	In its REQ, Yingao reported receiving a grant under this program.	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	The Commission is not aware of the eligibility criteria for this program.	The Commission considers that a grant provided under this program would be a financial contribution by the GOC, which involves a direct transfer of funds by the GOC to Yingao in China. The Commission further considers that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of Yingao (including deep drawn stainless steel sinks). In accordance with subsection 269TACC(2), this financial contribution is considered to confer a benefit to Yingao's manufacture of deep drawn stainless steel sinks because it is a direct financial payment from the GOC. The Commission finds that this Financial contribution to Yingao meets the definition of a subsidy under section 269T.	Due to the lack of evidence provided by Yingao, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable. In accordance with subsection 269TAAC(2)(a), the Commission considers that this subsidy is limited to, and predominantly benefits, particular enterprises undertaking high-technology manufacturing processes. The specificity of the subsidy is not excepted by reference to subsection 269TAAC(3). Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.	In accordance with subsection 269TACD(1), the amount of the subsidy received in respect of the goods is the grant amount as reported by Yingao. The Commission allocated the amount of the grant to sales of all goods as a proportion of sales revenue to determine a subsidy margin.

Program number	Program description	Background	WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method used to calculate subsidy margin
28	Higher-New Technology Enterprise	In its REQ, Yingao reported receiving a grant under this program.	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	The Commission is not aware of the eligibility criteria for this program.	The Commission considers that a grant provided under this program would be a financial contribution by the GOC, which involves a direct transfer of funds by the GOC to Yingao in China. The Commission further considers that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of Yingao (including deep drawn stainless steel sinks). In accordance with subsection 269TACC(2), this financial contribution is considered to confer a benefit to Yingao's manufacture of deep drawn stainless steel sinks because it is a direct financial payment from the GOC. The Commission finds that this Financial contribution to Yingao meets the definition of a subsidy under section 269T.	Due to the lack of evidence provided by Yingao, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable. In accordance with subsection 269TAAC(2)(a), the Commission considers that this subsidy is limited to, and predominantly benefits, particular enterprises undertaking high-technology manufacturing processes. The specificity of the subsidy is not excepted by reference to subsection 269TAAC(3). Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.	In accordance with subsection 269TACD(1), the amount of the subsidy received in respect of the goods is the grant amount as reported by Yingao. The Commission allocated the amount of the grant to sales of all goods as a proportion of sales revenue to determine a subsidy margin.

Program number	Program description	Background	WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method used to calculate subsidy margin
29	Patent Grant	In its REQ, Yingao reported receiving a grant under this program.	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	The Commission is not aware of the eligibility criteria for this program.	The Commission considers that a grant provided under this program would be a financial contribution by the GOC, which involves a direct transfer of funds by the GOC to Yingao in China. The Commission further considers that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of Yingao (including deep drawn stainless steel sinks). In accordance with subsection 269TACC(2), this financial contribution is considered to confer a benefit to Yingao's manufacture of deep drawn stainless steel sinks because it is a direct financial payment from the GOC. The Commission finds that this Financial contribution to Yingao meets the definition of a subsidy under section 269T.	Due to the lack of evidence provided by Yingao, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable. In accordance with subsection 269TAAC(2)(a), the Commission considers that this subsidy is limited to, and predominantly benefits, particular enterprises in possession of certain patents. The specificity of the subsidy is not excepted by reference to subsection 269TAAC(3). Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.	In accordance with subsection 269TACD(1), the amount of the subsidy received in respect of the goods is the grant amount as reported by Yingao. The Commission allocated the amount of the grant to sales of all goods as a proportion of sales revenue to determine a subsidy margin.

Program number	Program description	Background	WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method used to calculate subsidy margin
30	Patent Grant Special Fund	In its REQ, Yingao reported receiving a grant under this program.	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	The Commission is not aware of the eligibility criteria for this program.	The Commission considers that a grant provided under this program would be a financial contribution by the GOC, which involves a direct transfer of funds by the GOC to Yingao in China. The Commission further considers that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of Yingao (including deep drawn stainless steel sinks). In accordance with subsection 269TACC(2), this financial contribution is considered to confer a benefit to Yingao's manufacture of deep drawn stainless steel sinks because it is a direct financial payment from the GOC. The Commission finds that this financial contribution to Yingao meets the definition of a subsidy under section 269T.	Due to the lack of evidence provided by Yingao, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable. In accordance with subsection 269TAAC(2)(a), the Commission considers that this subsidy is limited to, and predominantly benefits, particular enterprises in possession of certain patents. The specificity of the subsidy is not excepted by reference to subsection 269TAAC(3). Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.	In accordance with subsection 269TACD(1), the amount of the subsidy received in respect of the goods is the grant amount as reported by Yingao. The Commission allocated the amount of the grant to sales of all goods as a proportion of sales revenue to determine a subsidy margin.