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Department of Industry, Innovation and Science

Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

REPORT

NO. 352

REVIEW OF ANTI-DUMPING MEASURES APPLYING TO

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

BY

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CONTENTS

ABBREVIATIONS

ABF	Australian Border Force
the Act	the *Customs Act 1901*
ADN	Anti-Dumping Notice
the applicant	Milena Australia Pty Ltd
China	the People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
the Committee	WTO Committee on Subsidies and Countervailing Measures
CTM	Cost to manufacture
CTMS	Cost to make and sell
Dumping Duty Act	*Customs Tariff (Anti-Dumping) Act 1975*
Dumping Duty Regulation	*Customs Tariff (Anti-Dumping) Regulation 2013*
EPR	Electronic Public Record
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 Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
the Regulation	*Customs (International Obligations) Regulation 2015*
REP 238	Anti-Dumping Commission Report No. 238
Review period	1 April 2015 to 31 March 2016
SCEA	Shengzhou Chunyi Electrical Appliances Co. Ltd.
SEF	Statement of essential facts
SG&A	Selling, general and administrative costs
Tasman	Tasman Sinkware Pty Ltd
WTO	World Trade Organization
304 SS CRC	304 stainless steel cold rolled coil

1 SUMMARY AND RECOMMENDATIONS

1.1 Summary

This review is in response to an application from Milena Australia Pty Ltd (Milena) 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 relevant to the taking of the anti-dumping measures in relation to SCEA. The variable factors relevant to the review are the normal value, export price, non-injurious price (NIP) and amount of countervailable subsidy received in respect of the goods. The applicant claims that the amount of countervailable subsidy received, normal value and export price of the goods have changed from the time when the original investigation was conducted.

1.2 Applicable law

Division 5 of Part XVB of the *Customs Act 1901* (the Act)[1] enables affected parties to apply for a review of anti-dumping measures. The division, among other matters:

- sets out the circumstances in which applications for the review of anti-dumping measures can be brought;
- sets out the procedure to be followed by the Commissioner of the Anti-Dumping Commission (the Commissioner) in dealing with such applications or requests and preparing reports for the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)[2]; and
- empowers the Parliamentary Secretary, after consideration of such reports, to leave the measures unaltered or to modify them as appropriate.

After conducting a review of anti-dumping measures, the Commissioner must give the Parliamentary Secretary a report containing recommendations.

1.3 Findings and conclusions

The Commissioner has conducted a review of 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 normal value, export

[1] 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.

[2] On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science. For the purposes of this decision the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

price, the NIP and the amount of countervailable subsidy received) in relation to SCEA have changed. The form of measures, *ad valorem*,[3] remains unchanged.

1.4 Recommendation

The Commissioner recommends to the Parliamentary Secretary that the dumping duty notice and countervailing duty notice have effect in relation to SCEA as if different variable factors (being the normal value, export price, the NIP and the amount of countervailable subsidy received) had been ascertained.

[3] *Ad valorem* duty: the duty payable is calculated as a percentage of the export price.

2 BACKGROUND

2.1 Original investigation

On 18 March 2014, the Commissioner initiated a dumping and countervailing investigation into deep drawn stainless steel sinks exported to Australia from China following an application lodged by Tasman Sinkware Pty Ltd (Tasman), the only manufacturer of deep drawn stainless steel sinks in Australia.

In that investigation, and as outlined in *Anti-Dumping Commission Report No. 238* (REP 238), it was found that:

- the goods exported to Australia from China were dumped, with margins ranging from 5.0 per cent to 49.5 per cent;
- the goods exported to Australia from China were subsidised, except for exports by Zhongshan Jiabaolu Kitchen & Bathroom Products Co. Ltd and Primy Corporation Limited, with margins ranging from 3.3 per cent to 6.4 per cent;
- the dumped and subsidised exports caused material injury to the Australian industry producing like goods; and
- continued dumping and subsidisation may cause further material injury to the Australian industry.

The findings and recommendations in REP 238 were provided to the then Parliamentary Secretary to the then Minister for Industry and Science (the then Parliamentary Secretary), recommending the publication of a dumping duty notice and a countervailing duty notice in respect of the goods. Notice of the then Parliamentary Secretary's decision to accept the recommendations in REP 238 was published in *The Australian* newspaper. Interested parties were also advised of this outcome in Anti-Dumping Notice (ADN) No. 2015/41 on 26 March 2015.

On 16 October 2015, following review by the Anti-Dumping Review Panel, the then Parliamentary Secretary gave public notice that she had affirmed her decision to impose anti-dumping measures.

2.2 Initiation of review

On 21 April 2016, 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. On 16 May 2016, the Commissioner initiated a review of the anti-dumping measures in respect of the goods as they apply to SCEA.

Consideration Report No. 352 (CON 352) was published on the Anti-Dumping Commission's (the Commission's) website detailing the reasons for not rejecting the

application. Notification of the initiation of the review was made in ADN No. 2016/53, which was published on the Commission's website on 16 May 2016.

The review period for the purpose of this review is 1 April 2015 to 31 March 2016. 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.[4]

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 the notice or the publication of a notice declaring the outcome of the last review of the dumping or countervailing duty notice.[5] The Parliamentary Secretary may however, at any time request that the Commissioner initiate a review.[6]

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 Parliamentary Secretary allows, place on the public record a statement of essential facts (SEF) on which he proposes to base recommendations to the Parliamentary Secretary in relation to the review of those measures.

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

In making recommendations in his report to the Parliamentary Secretary, 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 has 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.[7]

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[4] Subsection 269ZA(1).
[5] Subsection 269ZA(2)(a).
[6] Subsection 269ZA(3).
[7] Subsection 269ZDA(3)(a).

Additionally, the Commissioner may have regard to any other matter he considers to be relevant to the review.[8]

After the Parliamentary Secretary considers the report of the Commissioner and any other information that the Parliamentary Secretary considers relevant, the Parliamentary Secretary 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;[9] or
- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.

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

2.4 Statement of essential facts (SEF 352)

On 5 September 2016, the Commissioner placed on the public record SEF 352, to inform all interested parties of the essential facts on which the Commissioner proposed to base a recommendation to the Parliamentary Secretary in relation to the review of measures.

2.4.1 Submissions in response to the SEF 352

The Commissioner received one submission dated 22 September 2016 from Milena in response to SEF 352. A non-confidential version of the submission is on the public record. The Commissioner has had regard to this submission in deciding on the recommendations made to the Parliamentary Secretary in this report. Details of the submission received, and the Commissioner's assessment of the submission, are included in relevant sections of this report.

2.5 Supplementary information to SEF 352

Following the publication of SEF 352, the Commission placed one file note on the public record for this review.[10] Published on 29 September 2016, the file note summarised several issues and concerns raised by Milena at a meeting with ADC representatives on 22 September 2016.

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

[9] Subsection 269ZDB(1AA) provides that a revocation declaration cannot be made by the Parliamentary Secretary unless a revocation review notice has been published in relation to the review.

[10] Accessible via the electronic public record.

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 Tariff classification

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

3.5 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.

3.5.1 Submission in relation to like goods

Milena claimed that only one model it imported is comparable to an Australian industry product and this model could be considered a 'like good.' Milena further claimed that the

Australian industry does not produce any equivalent goods to the other models imported by Milena and the laundry tubs produced by the Australian industry cannot be considered like products to lipped laundry tubs.

Commission's assessment

The Commission notes that a like goods assessment is not relevant to this review, which is limited to a review of the variable factors relevant to SCEA's exports.

However, as a result of information provided in this review, the Commission identified that like or directly competitive goods to the imported goods may not be available in Australia. Consequently the Commissioner initiated an exemption inquiry (EX0047) on 10 October 2016 to inquire whether "*like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade*."[11] Further details in relation to EX0047 can be found on the Commission's website.[12]

[11] Subsections 8(7)(a) and 10(8)(a) of the *Customs Tariff (Anti-Dumping) Act 1975*
[12] www.adcommission.gov.au

4 EXPORTER INFORMATION

4.1 Findings

The Commission 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.

Whilst an on-site verification visit was not conducted, a detailed analysis of the exporter questionnaire response provided by SCEA was completed. The Commission has various other means for testing the accuracy, relevance and completeness of data to a satisfactory level. A number of tests have been undertaken on SCEA's data for the purpose of this review. Those tests include comparison of SCEA's data to data verified in the original investigation, data from the Australian Border Force (ABF) import database and verification of data to SCEA's cost accounting system and source documents.

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 are 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, however the Commission found that SCEA did make a single domestic sale of a small volume of one of the models exported to Australia.

4.5 Australian Border Force database

The Commission compared SCEA's export sales information to the data in the Australian Border Force's (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 variable factors relevant to the taking of anti-dumping measures in relation to the goods exported to Australia by SCEA 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.

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.

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 a single weighted average export price for 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 Parliamentary Secretary 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).*

This provision may operate where there has not been a sufficient volume of sales of like goods sold on the domestic market in the ordinary course of trade;[13] or in cases when, even though there are sufficient sales of like goods on the domestic market, there is otherwise an absence or low volume of relevant sales (i.e. there is something else about the sales that makes them irrelevant for determining normal values).

As a result of the exporter verification, 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 due to the fact that:

- there was only one domestic model comparable to an Australian export model sold by SCEA;
- this domestic model was sold in a different quarter to the export model; and
- for all other models, 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.[14]

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 this model to make it comparable with the export price.

Where subsection 269TAC(2)(a)(i) applies, 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)).[15] 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 single weighted average normal value for the goods at **Confidential Appendix 1.**

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[13] Subsection 269TAC(14) refers

[14] Section 4.4 above refers

[15] In accordance with subsection 269TAC(3A) the Minister is not required to consider third country sales before working out a constructed normal value

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.[16] 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 cost 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 a competitive market cost for that input on the basis that prices in China are affected by Government of China (GOC) influences in the iron and steel industry.[17] The Commission has no evidence that this situation has changed and, as the cost of 304 SS CRC represents a major cost of production of deep drawn stainless steel sinks, the Commission considers that SCEA's records do not reasonably reflect competitive market costs associated with the production or manufacture of the goods.

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).[18]

For this review 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 the review 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:

- Northern Europe domestic – CR 304 2B 2mm coil transaction price – delivered
- Southern Europe domestic – CR 304 2B 2mm coil transaction price – delivered

[16] Subsection 269TAC(5A)(a)
[17] REP 238 at section 6.9 and Non-Confidential Appendix 4 refer
[18] REP 238 at section 6.10.1 and Non-Confidential Appendix 8 refer

- Northern America domestic – CR 304 2B 14 gauge transaction price – ex-mill US

Based on the finding in REP 238 that the costs of 304 SS CRC incurred by Chinese exporters of the goods do not reasonably reflect competitive market costs for that input, the Commission applied the same methodology to adjust SCEA's costs as was applied in the original investigation.[19] 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.

Details of benchmark calculations for the goods are at **Confidential Appendix 2.**

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 Submission in relation to cost of production

Milena submitted it has supporting documentation indicating the price its Chinese supplier has paid for stainless steel is fair and a 'normal value':

- this is the price paid by Australian companies using stainless steel and is more representative than data based on European and US values; and

- based on this price, and including a reasonable allowance for cost, insurance and freight (CIF) and mark up, there is no claimed variance.

Milena acknowledged that MEPS does not consent to the Commission using its price data, and further noted that the historic MEPS data indicated the Asian price was approximately 15 per cent lower at the start of 2015 but by late 2015 the US price was lower and by early 2016 the European price was lower.

Commission's assessment

As indicated in Section 5.3.1, the Commission found in the original investigation that Chinese stainless steel prices did not reasonably reflect competitive market costs and replaced these costs using a benchmark price that was not influenced by Chinese domestic prices. The Commission has sought to replicate this methodology in this review by again using a benchmark based on an average of North American and European prices. The Commission was unable to use MEPS data because MEPS did not consent to the use of its data by the Commission for the purposes of this review. The Commission determined Platts is a suitable alternative source of benchmark pricing data.

[19] REP 238 at section 6.10.2 refers

5.3.3 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.[20]

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 eight per cent for the difference in VAT liability between the export and domestic markets.

5.3.4 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.[21]

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.

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 during the review period, with the weighted average of corresponding normal values in accordance with subsection 269TACB(2)(a) of the Act.

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[20] Subsection 269TAC(5A)(b)
[21] Subsection 269TAC(5B)

The Commission calculated a single product dumping margin of 34.13 per cent at **Confidential Appendix 1**.

6 VARIABLE FACTORS - COUNTERVAILING DUTY NOTICE

6.1 Finding

The Commission has determined that the amount of countervailable subsidy received by, and therefore the subsidy margin applicable to, SCEA in the review period has changed.

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 its response to the exporter questionnaire, SCEA indicated it received a countervailable subsidy fitting the description of program 8 during the review period. SCEA also 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 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.[22]

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

No evidence was provided to the Commission that these conditions have changed and Program 1 is therefore considered to still be a countervailable subsidy for the purposes of this review.[23] 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 has used Platts data in similar circumstances previously and considers that this is a suitable and reliable 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. For these purchases, the Commission compared the prices SCEA paid to the Platts-based benchmark price and found that SCEA received a benefit over the review period. The Commission therefore finds that SCEA was in receipt of a countervailable subsidy under Program 1 during the review period.[24]

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.[25]

In its exporter questionnaire response SCEA indicated that it received a benefit under Program 8 during the review period, equal to the amount of income tax revenue foregone by the GOC, as evidenced by SCEA's 2015 income tax return. The Commission therefore finds that SCEA was in receipt of a countervailable subsidy under Program 8 during the review period.[26]

6.2.3 Submission in relation to countervailing duty notice

Milena claimed that the key issue regarding countervailing is that its Chinese supplier makes small profits and therefore pays less tax.

Commission's assessment

As indicated above, SCEA declared receipt of a benefit under Program 8 on the basis that it was subject to a reduced rate of income tax. However, the Commission has also found that SCEA received a benefit under Program 1 (Raw materials provided by the government at less than fair market value) on the basis that SCEA purchased the majority of its stainless steel from SIEs.

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[23] In accordance with the definition of *subsidy* and *countervailable subsidy* in subsection 269T(1) and section 269TAAC of the Act

[24] In accordance with subsections 269TACC(3)(d) and (4)

[25] REP 238 at Appendix 8, Part IV

[26] In accordance with subsection 269TACC(1) and the definition of *subsidy* in subsection 269T(1), being the foregoing, or non-collection, of revenue due to the GOC

6.3 Conclusion – countervailable subsidisation

The Commission has found that SCEA was in receipt of two countervailable subsidies, Programs 1 and 8, during the review period. The subsidy margin is 20.03 per cent and the calculation is at **Confidential Appendix 3**.[27]

[27] The subsidy margin has been calculated in accordance with section 269TACD

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 Parliamentary Secretary 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 Parliamentary Secretary 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 (WTO)).[28]

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).

7.2 The Commission's approach to non-injurious price and lesser duty rule

In the original investigation the Commissioner recommended that regard should not be had to the lesser duty rule, and hence the NIP is not in operation in relation to these measures.

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

The Commissioner state his reasons why regard was not had to the desirability of fixing a lesser rate of duty:

> *"The Commissioner found that the goods were in receipt of notified countervailable subsidies and the Australian Government's Department of Foreign Affairs and Trade advised the Commission that China failed to comply with its notification obligations under Article 25 of the SCM Agreement.*
>
> *In light of the above, the Commissioner considers that regard should not be had to the desirability of fixing a lesser rate of duty, and the full margin of the assessed dumping and countervailable subsidisation should be applied to the collection of interim dumping duty and interim countervailing duty that the Commissioner recommends to the Parliamentary Secretary in the final report for this investigation."*[29]

In other words, regard was not had to the desirability of fixing a lesser rate of duty (and therefore the full amount of duty was applied) on the basis that China had failed to comply with its notification obligations to the WTO. As outlined in the most recent annual reports of the WTO Committee on Subsidies and Countervailing Measures (the Committee), China has now complied with its notification obligations for the 2013 and 2015 reporting years (compliance period).[30]

As a result, the exception to the application of the lesser duty rule that was outlined in REP 238 no longer applies, as China has complied with its notification obligations. The Commission also notes that the other two circumstances in which regard may not be had to the lesser duty rule do not apply in this case, namely:

- particular market situation circumstance – there is no particular market situation finding in this case; or
- SME circumstance – the Australian industry in respect of deep drawn stainless steel sinks consists of only one member.

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.[31] 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 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.

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[29] REP 238 at Section 11.3
[30] See relevant WTO reports at Non-Confidential Attachment 1
[31] Dumping and Subsidy Manual at Section 23.2

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.[32]

Consequently, the Commission has, for the purpose of this review, determined a USP based on Tasman's weighted average CTMS during the review period. The Commission has further considered including an appropriate amount 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).[33]

The Commission 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. However, the Commission does have sufficient verified information to calculate a profit rate under the first option.

In SEF 352 the Commission proposed to include an amount for profit in the USP based on the weighted average profit rate from the 2008-09 financial year, which was a period unaffected by dumping. However, the Commission has found that Tasman's sales of single bowl sinks in 2008-09 were not profitable, therefore an amount for profit has not been included.

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 4**.

[32] Dumping and Subsidy Manual at Section 23.3
[33] ibid.

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 ascertained export price has changed;
- the ascertained normal value has changed;
- the non-injurious price has changed;
- the 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.

The Commissioner recommends that the Parliamentary Secretary 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 Parliamentary Secretary 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 5, 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 5,as adjusted in

accordance with subsection 269TAC(9), as set out in Confidential Appendix 5, 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 1;

- 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 20.03 per cent, as set out in Confidential Appendix 3.

The Commissioner recommends that the Parliamentary Secretary 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 non-injurious price;

- 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 non-injurious price.

If the Parliamentary Secretary accepts these recommendations, the Parliamentary Secretary must declare, by notice published on the Anti-Dumping 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, 3 and 4 had been fixed in respect of SCEA relevant to the determination of duty.

9 APPENDICES AND ATTACHMENTS

Confidential Appendix 1	Export price, normal value and dumping margin calculations
Confidential Appendix 2	Benchmark calculations
Confidential Appendix 3	Subsidy margin calculation
Confidential Appendix 4	USP and NIP calculations
Confidential Appendix 5	Cost of manufacture, SG&A, profit and s.269TAC(9) adjustment calculations
Non-Confidential Attachment 1	WTO Committee on Subsidies and Countervailing Measures Annual Report 2014 and Annual Report 2015