



CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS
NO. 238

**ALLEGED DUMPING AND SUBSIDISATION OF DEEP DRAWN
STAINLESS STEEL SINKS
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

23 December 2014

SEF 238 Deep Drawn Stainless Steel Sinks - China

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ABBREVIATIONS

\$	Australian dollars
the Act	<i>Customs Act 1901</i>
ACBPS	The Australian Customs and Border Protection Service
ADN	Anti-Dumping Notice
The applicant	Tasman Sinkware Pty Ltd (Tasman)
CBSA	Canada Border Services Agency
CFR	Cost and freight
China	The People's Republic of China
the Commission	The Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTM	Cost to make
CTMS	Cost to make & sell
CTS	Cost to sell
DSB	World Trade Organisation Trade Dispute Settlement Body
Exporter Questionnaire	Exporter Questionnaire
FOB	Free On Board
GAAP	Generally accepted accounting principles
GOC	Government of China
the goods	the goods the subject of the application (deep drawn stainless steel sinks)
Government Questionnaire	Government Questionnaire
HSS	Hollow structural sections
Investigation period	1 January to 31 December 2013
Jiabaolu	Zhongshan Jiabaolu Kitchen & Bathroom Products Co., Ltd
MEPS	MEPS (International) Ltd
NIP	Non-injurious Price
PAD	Preliminary Affirmative Determination
PAD 238	Preliminary Affirmative Determination Report 238
the Parliamentary Secretary	the Parliamentary Secretary to the Parliamentary Secretary for Industry
Primy	Primy Corporation Limited
the Regulations	the <i>Customs Regulations 1926</i>
SEF	Statement of Essential Facts
Tasman	Tasman Sinkware Pty Ltd
USP	Unsuppressed Selling Price
WTO	World Trade Organization
Zhuhai Grand	Zhuhai Grand Kitchenware Co., Ltd

1 SUMMARY AND RECOMMENDATIONS

This statement of essential facts (SEF) relates to the Anti-Dumping Commission's (the Commission's) investigation into allegations by Tasman Sinkware Pty Ltd (Tasman) that dumped and subsidised deep drawn stainless steel sinks exported to Australia from the People's Republic of China (China) have caused material injury to the Australian industry producing like goods.

This SEF sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base recommendations regarding this investigation, subject to any submissions received in response to this SEF.

1.1 Proposed recommendation

The Commission has found that deep drawn stainless steel sinks exported from China were exported at dumped and subsidised prices during the period 1 January 2013 to 31 December 2013 (the investigation period). The Commission further found that the volumes of dumped and subsidised goods were not negligible and that those exports caused material injury to the Australian industry.

Based on these preliminary findings, and subject to any submissions received in response to this SEF, the Commissioner proposes to recommend that the Parliamentary Secretary to the Minister for Industry (the Parliamentary Secretary)¹ publish:

- a dumping duty notice in respect of all exports of deep drawn stainless steel sinks from China; and
- a countervailing duty notice in respect of all exports of deep drawn stainless steel sinks from China, except for exports by Zhongshan Jiabaolu Kitchen & Bathroom Products Co., Ltd (Jiabaolu) and Primy Corporation Limited (Primy).

The Commission proposes to terminate the subsidy investigation as it relates to Jiabaolu and Primy, subject to responses received by the Commission in response to this SEF.

1.2 Application of law to facts

1.2.1 Authority to make decision

Division 2 of Part XVB of the *Customs Act 1901*² (the Act) sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application for the purpose of making a report to the Parliamentary Secretary.

¹ The Minister for Industry has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker for this investigation.

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

1.2.2 Application

On 31 January 2014, Tasman lodged an application requesting that the Parliamentary Secretary publish a dumping duty notice and countervailing duty notice in respect of deep drawn stainless steel sinks exported to Australia from China.

The Commissioner was satisfied that the application was made in the prescribed manner by a person entitled to make the application³.

1.2.3 Initiation of investigation

After examining the application, the Commissioner was satisfied that:

- there is an Australian industry in respect of like goods; and
- there appears to be reasonable grounds for the publication of a dumping duty notice and a countervailing duty notice in respect of goods the subject of the application, or for the publication of such notices upon the importation into Australia of such goods.⁴

The Commissioner decided not to reject the application, and notice of the initiation of this investigation was published on 18 March 2014⁵.

1.2.4 Preliminary Affirmative Determination

On 13 August 2014, the Commissioner, after having regard to the application and submissions, was satisfied that there were sufficient grounds for the publication of a dumping duty notice in respect of deep drawn stainless steel sinks exported to Australia from China, and made a preliminary affirmative determination (PAD)⁶ to that effect. The reasons for making that Decision were contained in PAD Report 238 (PAD 238).

No PAD was made in relation to subsidies.

The Commissioner decided to require and take securities⁷ in respect of any interim dumping duty that may become payable in respect of the goods from China that were entered into home consumption on or after 13 August 2014.

1.2.5 Revision of securities

On 24 October 2014, the security rates applicable to all exporters of the goods were amended to align with the Commission's updated assessment of the relevant dumping margins for those exporters. The amended rate of securities was applied to the goods imported on or after that date.

Notification of this variation to securities was made in ADN 2014/115.

³ Section 269TB

⁴ Section 269TC(1)

⁵ Section 269TC(4)

⁶ Section 269TD

⁷ S.42

1.2.6 Statement of essential facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as the Parliamentary Secretary allows⁸, place on the Public Record a statement of the facts on which the Commissioner proposes to base his recommendation in relation to that application⁹.

In formulating the SEF, the Commissioner must have regard to the application concerned, any submissions concerning publication of the notice that are received by the Commission within 40 days after the date of initiation of the investigation, and any other matters considered relevant¹⁰.

On 20 June 2014, the Parliamentary Secretary granted a 90 day extension to the date by which the SEF must be placed on the Public Record. A further 90 day extension was granted by the Parliamentary Secretary on 7 October 2014.

The due date for this SEF to be placed on the Public Record was on or before 5 January 2015 (or the next working day).

1.3 Findings and conclusions

The Commission has made the following findings and conclusions based on available information at this stage of the investigation.

1.3.1 The goods and like goods (Chapter 3 of this report)

Locally produced deep drawn stainless steel sinks are like to the goods the subject of the application.

The Commission has also considered a number of submissions from interested parties in relation to certain goods being eligible for an exemption from any anti-dumping measures under the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act). The Commission proposes to recommend that the Parliamentary Secretary exercise his discretion under the Dumping Duty Act to exempt hand wash basins and cleaner's sinks from any anti-dumping measures that may result from this investigation.

1.3.2 Australian industry (Chapter 4 of this report)

The Commission has found there is an Australian industry producing like goods.

1.3.3 Dumping investigation (Chapter 6 of this report)

The Commission found that deep drawn stainless steel sinks exported to Australia from China during the investigation period were dumped. The volume of dumped goods, and the dumping margins, were not negligible.

⁸ Section 269ZHI

⁹ Section 269TDAA(1)

¹⁰ Section 269TDAA(2)

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The Commission found the following dumping margins:

Exporter / Manufacturer	Preliminary product dumping margin
Zhuhai Grand Kitchenware Co., Ltd	21.1%
Primy Corporation Limited	15.0%
Zhongshan Jiabaolu Kitchen & Bathroom Products Co., Ltd	22.5%
Jiangmen New Star Hi-Tech Enterprise Ltd.	19.1%
Elkay (China) Kitchen Solutions Co., Ltd.	19.1%
Franke (China) Kitchen System Co., Ltd	19.1%
Xinhe Stainless Steel Products Co., Ltd	19.1%
Zhongshan Xintian Hardware Co., Ltd.	19.1%
Rhine Sinkwares Manufacturing Ltd. Huizhou	19.1%
Yuyao Afa Kitchenware Co., Ltd	19.1%
Jiangmen City HeTangHengWeiDa Kitchen & Sanitary Factory	19.1%
Uncooperative and all other exporters	58.8%

Table 1 - Product dumping margins

1.3.4 Subsidy investigation (Chapter 7 of this report)

Following its investigation into 24 alleged countervailable subsidy programs, the Commission has found that 23 programs are countervailable subsidies in relation to deep drawn stainless steel sinks, as follows:

- Program 1 – Stainless steel received at less than adequate remuneration
- Program 2 - Research & Development (R&D) Assistance Grant
- Program 3 - Grants for Export Activities
- Program 4 - Allowance to pay loan interest
- Program 5 - International Market Fund for Export Companies
- Program 6 - International Market Fund for Small and Medium-sized Export Companies
- Program 8 - Tax preference available to companies that operate at a small profit
- Program 9 - Award to top ten tax payer
- Program 10 - Assistance to take part in overseas trade fairs
- Program 11 - Grant for management certification
- Program 12 - Grant for certification of product patents
- Program 13 - Grant for inventions, utility models and designs
- Program 14 - Grant for international marketing
- Program 15 - Grant for electronic commerce
- Program 16 - Grant for overseas advertising and trademark registration
- Program 17 - Grant for overseas marketing travel or study
- Program 18 - Gaolan Port Subsidy
- Program 19 - Information development subsidy
- Program 20 - Foreign Trade Exhibition Activity Fund

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- Program 21 - Zhuhai Technology Reform & Renovation Fund
- Program 22 - Zhuhai Support the Strong Enterprise Interests Subsidy
- Program 23 - Zhuhai Research & Development Assistance Fund
- Program 24 - Preferential Tax Policies for High and New Technology Enterprises

Subsidy margins determined for Chinese exporters are:

Exporter / Manufacturer	Preliminary product subsidy margin
Zhuhai Grand Kitchenware Co., Ltd	10.3%
Primy Corporation Limited	Negligible
Zhongshan Jiabaolu Kitchen & Bathroom Products Co., Ltd	Negligible
Jiangmen New Star Hi-Tech Enterprise Ltd.	9.7%
Elkay (China) Kitchen Solutions Co., Ltd.	9.7%
Franke (China) Kitchen System Co., Ltd	9.7%
Xinhe Stainless Steel Products Co., Ltd	9.7%
Zhongshan Xintian Hardware Co., Ltd.	9.7%
Rhine Sinkwares Manufacturing Ltd. Huizhou	9.7%
Yuyao Afa Kitchenware Co., Ltd	9.7%
Jiangmen City HeTangHengWeiDa Kitchen & Sanitary Factory	9.7%
Uncooperative and all other exporters	11.5%

Table 2 - Product subsidy margins

The Commission proposes to terminate the subsidy investigation so far as it relates to exports by Primy and Jiabaolu.

1.3.5 Economic condition of the industry (Chapter 8 of this report)

The Commission is satisfied that, during the investigation period, the Australian industry producing like goods experienced injury in the form of:

- lost sales volumes;
- price depression;
- reduced profit and profitability at the whole company level;
- reduced capacity utilisation;
- reduced capital investment;
- reduced value of production assets;
- reduced revenue; and
- reduced employment numbers.

1.3.6 Causation (Chapter 9 of this report)

The Commission is satisfied that there are grounds to find that dumping and subsidisation of deep drawn stainless steel sinks exported from China caused material injury to the Australian industry (Tasman) producing like goods.

1.3.7 Non-injurious price (Chapter 11 of this report)

Noting the operation of s. 8(5BAA)(a) of the Dumping Duty Act and the Commission's findings that the goods have been in receipt of non-notified countervailable subsidies, the Commission recommends that regard should not be had to the desirability of fixing a lesser rate of duty and the full preliminarily assessed dumping and subsidy margins be applied to any interim dumping duty and interim countervailing duty taken in relation to deep drawn stainless steel sinks

1.3.8 Proposed measures (Chapter 12 of this report)

The Commission proposes to recommend that the interim dumping duty and interim countervailing duty imposed be the:

- ad valorem rate of countervailable subsidisation; plus
- the ad valorem rate of dumping, minus an amount for the subsidy rate applying to subsidy Program 1 (where this has been received by the exporter or group of exporters).

2 BACKGROUND

2.1 Initiation

On 31 January 2014, Tasman lodged an application requesting that the Parliamentary Secretary publish a dumping duty notice and countervailing duty notice in respect of deep drawn stainless steel sinks exported to Australia from China.

Following consideration of the application, the Commissioner decided not to reject the application and the Commission initiated an investigation on 18 March 2014. Public notification of initiation of the investigation (public notice) was made in *The Australian* newspaper on that day.

Anti-Dumping Notice (ADN) No. 2014/20 provides further details of the investigation and is available on the Commission's website at www.adcommission.gov.au

In respect of the investigation:

- the investigation period for the purpose of assessing dumping is 1 January 2013 to 31 December 2013; and
- the injury analysis period for the purpose of determining whether material injury has been caused to the Australian industry is from 1 January 2009.

2.2 Preliminary affirmative determination and securities

The CEO may, at any time not earlier than 60 days after the date of initiation of an investigation, make a PAD in respect of goods the subject of an application.

In order to make a PAD, the Commissioner must be satisfied that:

- a) there appears to be sufficient grounds for the publication of such a notice; or
- b) it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation into Australia of such goods.

On 13 August 2014, the Commissioner issued a PAD advising that there appeared to be sufficient grounds for the publication of a dumping duty notice in respect of the goods exported to Australia from China.

In the PAD the Commission assessed that:

- the normal value of deep drawn stainless steel sinks exported to Australia can be established pursuant to s. 269TAC(2)(c), using constructed costs, due to the lack of relevant domestic sales suitable for use as a normal value;
- the cost of stainless steel as recorded in the financial records of exporters of deep drawn stainless steel sinks does not reasonably reflect a competitive market cost for stainless steel in China - a benchmark cost for stainless steel can be established using world composite data (excluding Asian prices) from MEPS (International) Ltd (MEPS);
- deep drawn stainless steel sinks exported to Australia from China during the investigation period were dumped; and
- the volume of dumped goods, and the dumping margins for all exporters excluding one (Jiabaolu) were not negligible.

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The Commissioner was satisfied that it was necessary to apply, under s. 42 of the Act, securities to the goods subject to the application (the goods) in order to prevent material injury occurring to the Australian industry while the investigation continues. Securities were taken in accordance with the preliminary dumping margins for the exporters of the goods, in relation to goods entered for home consumption on or after 13 August 2014.

The PAD did not make any preliminary findings regarding allegations of countervailable subsidisation of deep drawn stainless steel sinks sector.

The full PAD report, *Preliminary Affirmative Determination Report No. 238* (PAD 238), is available on the Commission's Public Record.

Following verification of responses to the Exporter Questionnaire received from three selected exporters, the Commission amended the dumping margins for those exporters from those assessed in PAD 238. This assessment also changed the dumping margins assessed for all other exporters of the goods from China (whose dumping margins are based on the information supplied by the selected exporters – see Chapter 6).

As these revised dumping margins differed significantly from those assessed in PAD 238 the Commissioner decided that it was necessary to amend the imposed rate of dumping securities being taken while the investigation continued, to align with the revised dumping margins following the verification of exporter data.

On 24 October 2014, the security rates were amended applicable to goods being imported to Australia on or after that date. Notification of this variation was made in ADN 2014/115.

This revision also took into account a submission received from one exporter (Jiabaolu) prior to the revision. The Commission's consideration of this submission resulted in an amendment to the dumping margin assessed for that exporter in that company's Exporter Visit Report.

2.3 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to Parliamentary Secretary in relation to the Commission's investigation into deep drawn stainless steel sinks.

This SEF represents an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response to the SEF. However, it is important to note that the SEF may not represent the final views of the Commissioner.

Interested parties have 20 days to respond to the SEF. The Commissioner will consider these responses in making its final report to the Parliamentary Secretary. The report will recommend whether or not a dumping duty notice and/or a countervailing duty notice should be published, and the extent of any interim duties that are, or should be, payable.

Responses to this SEF should be received by the Commissioner no later than **12 January 2015**. 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 Parliamentary Secretary.

The Commissioner must report to the Parliamentary Secretary by 19 February 2015.

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Submissions should preferably be emailed to operations2@adcommission.gov.au.

Alternatively, they may be sent to fax number +61 2 6275 6990, or posted to:

Director Operations 2
Anti-Dumping Commission
Customs House
5 Constitution Ave
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's web site www.adcommission.gov.au.

The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's Exporter Visit Reports and other publicly available documents. It is available by request in hard copy in Canberra (phone (02) 6275 6173 to make an appointment), or online at www.adcommission.gov.au

Documents on the Public Record should be read in conjunction with this SEF.

3 THE GOODS AND LIKE GOODS

3.1 Findings

The Commission considers that locally produced deep drawn stainless steel sinks are like to the goods the subject of the application (the goods).

The Commission has considered a number of submissions from interested parties in relation to the exclusion of certain goods from the investigation and any resulting anti-dumping measures due to them not being considered to be the goods as described below, or due to them being eligible for an exemption from those measures under the Dumping Duty Act. In relation to these claims, the Commission finds the following.

- Lipped laundry tubs, when imported separately from the components that convert these tubs into free-standing laundry units (see below):
 - are the goods subject to the investigation; and
 - are not eligible for an exemption from anti-dumping measures under the Dumping Duty Act.
- Stand-alone laundry units (whether imported fully assembled or in a 'kit') are not the goods subject to the investigation.
- Tight corner radius sinks:
 - are the goods subject to the investigation; and
 - are not eligible for an exemption from anti-dumping measures under the Dumping Duty Act.
- Hand wash basins and cleaner's sinks:
 - are the goods subject to the investigation; and
 - are eligible for an exemption from anti-dumping measures under the Dumping Duty Act.

In light of the above, the Commission proposes to recommend that the Parliamentary Secretary exercise his discretion under the Dumping Duty Act to exempt hand wash basins and cleaner's sinks from any anti-dumping measures that may result from this investigation.

3.2 The goods

The goods the subject of the application/under consideration (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.

Additional product information

The application contains the following further information in relation to the goods the subject of the application.

For the purposes of this definition, the term “deep drawn” refers to a manufacturing process using metal forming technology to produce a smooth basin with seamless, smooth, and rounded corners. Deep drawn stainless steel sinks are available in various shapes and configurations and may be described in a number of ways including flush mount, top mount, or undermount (to indicate the attachment relative to the countertop). Stainless steel sinks with multiple deep drawn bowls that are joined through a welding operation to form one unit are covered by the scope of the investigations. “Finished or unfinished” refers to whether or not the imported goods have been surface treated to their intended final “finish” for sale. Typically, finishes include brushed or polished.

Deep drawn stainless steel sinks are covered by the scope of the investigation whether or not they are sold in conjunction with accessories such as mounting clips, fasteners, seals, sound-deadening pads, faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

Excluded from the definition of the goods the subject of this application are stainless steel sinks with fabricated bowls. Fabricated bowls do not have seamless corners, but rather are made by notching and bending the stainless steel, and then welding and finishing the vertical corners to form the bowls. Stainless steel sinks with fabricated bowls may sometimes be referred to as “fabricated sinks”.

Deep drawn stainless steel sinks are commonly used in residential and non-residential installations including in kitchens, bathrooms, utility and laundry rooms. When used in the context of bathrooms, deep drawn stainless steel sinks may there be referred to, for marketing purposes, as “wash basins”. As noted above, deep drawn stainless steel sinks may have may, or may not, have a single (or multiple) integrated drain board that forms part of the sink structure, designed to direct water into the sink bowl.

3.3 Tariff classification

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

The ACBPS' tariff branch has confirmed this is the correct classification.

The rate of Customs duty payable is 5 per cent.

3.4 Like goods legislation and framework

Subsection 269TC(1) of the Act requires that the Commissioner must reject an application for a dumping duty notice and/or a countervailing duty notice if, inter alia, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

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In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are “like” 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.

An Australian industry can apply for relief from injury caused by dumped or subsidised imports even if the goods it produces are not identical to those imported. The industry must however, produce goods that are “like” to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

- i. physical likeness;
- ii. commercial likeness;
- iii. functional likeness; and
- iv. production likeness.

3.5 Like goods assessment

From available information, the Commission has identified that Tasman is the sole Australian producer of like goods (the ‘Australian industry’). For discussion of the findings that the Australian industry produces like goods, see Chapter 4.

Tasman’s Australian-produced goods are not identical in all respects to the goods under consideration, being produced to Tasman-specific designs (including such characteristics of bowl shape, drainer board pattern, profile, etc.) while the imported goods are produced to other designs.

However, the Commission has assessed, based on the information currently before it, that Tasman has demonstrated the following in relation to deep drawn stainless steel sinks:

- i. Physical likeness:

Similar to the imported deep drawn stainless steel sinks, the Australian industry manufactures a wide variety of deep drawn stainless steel sinks, available in multiple shapes or profiles and in various finishes.

- ii. Commercial likeness:

The Australian industry’s deep drawn stainless steel sinks compete directly with imported goods in the Australian market, as evidenced by the supply of deep drawn stainless steel sinks from China to many customers of the Australian industry.

- iii. Functional likeness:

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Both imported and Australian produced deep drawn stainless steel sinks have comparable or identical end-uses as evidenced by Australian industry customers that source equivalent goods from China.

iv. Production likeness:

Australian industry deep drawn stainless steel sinks are manufactured in a similar manner to the imported goods.

The findings on i, ii, iii, and iv above lead to the conclusion that the Australian-produced products, while not identical, have characteristics closely resembling the imported goods. These findings are not premised on a comparison of individual imported and domestically produced models, but rather represent a global consideration of deep drawn stainless steel sinks as a whole.

In light of the above, the Commission is satisfied that the Australian industry produces like goods to the goods the subject of the application, as defined in s. 269(T) of the Act.

3.6 Interested party claims – the goods, like goods and requests to exempt goods

The Commission has received submissions from various interested parties throughout the investigation relating to particular imported goods that either:

- a) are not the goods under consideration (i.e. not within the parameters of the goods description above) and hence not subject to the investigation or any resulting anti-dumping measures; or
- b) should be exempted from measures due to the Australian industry not producing like or directly competitive goods to those imports - this includes one formal request for a Ministerial exemption lodged by Abey Australia Pty Ltd (Abey) on 13 October 2014.

The claims in relation to particular imported products, and the Commission's assessment in relation to each, are detailed in **Non-Confidential Appendix 1**.

Following this assessment, the Commission has preliminarily determined the following.

- Lipped laundry tubs, when imported separately from the components that convert these tubs into free-standing laundry units, are the goods subject to the investigation. In addition, the Australian industry does produce like or directly competitive goods to lipped laundry tubs and the Commission proposes to not recommend to the Parliamentary Secretary that he grant an exemption from anti-dumping measures in relation to these products.
- Stand-alone laundry units (whether imported fully assembled or in a 'kit') are not the goods subject to this investigation, or any anti-dumping measures that may result from it.
- Tight corner radius sinks are the goods subject to the investigation and the Australian industry does produce like or directly competitive goods to these imported products.

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The Commission does not propose to recommend that the Parliamentary Secretary grant an exemption from anti-dumping measures in respect of these goods.

- Hand wash basins and cleaner's sinks are the goods subject to the investigation. However the Australian industry does not produce 'like or directly competitive goods' to hand wash basins or cleaner's sinks, and hence the Commission proposes to recommend that the Parliamentary Secretary exercise his discretion under the Dumping Duty Act to exempt these from anti-dumping measures.

Consequently, the Commission proposes to recommend to the Parliamentary Secretary that he exercise his discretion under the Dumping Duty Act to exempt cleaner's sinks and hand wash basins from anti-dumping measures that may result from this investigation.

4 THE AUSTRALIAN INDUSTRY

4.1 Finding

The Commission has found that:

- there is an Australian industry consisting of Tasman that produces like goods in Australia; and
- these like goods were wholly manufactured in Australia.

4.2 Legislative framework

In order to publish a dumping duty notice and/or a countervailing duty notice, the Parliamentary Secretary must be satisfied that the “like” goods are in fact produced in Australia.

Subsections 269T(2) and 269T(3) of the Act specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

4.3 Production process

In April 2014, a verification team from the Commission undertook a visit to Tasman’s manufacturing facility in Regency Park, South Australia. The verification team observed Tasman’s production process of deep drawn stainless steel sinks to be as follows.

- Blanks are deep drawn and stretched using mechanical and hydraulic presses into bowls.
- Drainer trays are pressed from the blanks.
- The plastic protective sheet is stripped from the bowls and drainers.
- The bowl is welded to the drainer.
- Weld joints between the bowl and drainer are ground.
- The sink assembly is polished and washed.
- A wood backing panel is glued to the drainer for strength and sound deadening.
- Installation clips are glued to the sink.
- A foam gasket seal is applied to the underside edge of the sink.
- The finished sink is packaged for delivery (with accessories if sold in a pack).

Based on the above, the Commission is satisfied that deep drawn stainless steel sinks are wholly manufactured in Australia.

Having undertaken verification visits to Tasman’s Regency Park factory, as well as to importers of deep drawn stainless steel sinks, the Commission is satisfied that Tasman is the sole producer of deep drawn stainless steel sinks in Australia. Accordingly, the Australian industry consists of Tasman alone.

5 AUSTRALIAN MARKET

5.1 Preliminary finding

The Commission considers that it is unable to accurately assess the market size of the Australian deep drawn stainless steel sinks industry for the purposes of this SEF. However, the Commission has examined other indicators to develop an understanding of import volumes and market size trends over the injury analysis period, allowing it to make preliminary conclusions relevant to these matters. The lack of reliable market size data therefore has limited bearing on the preliminary findings in this report.

5.2 Background

The Commission understands that the deep drawn stainless steel sink market in Australia is primarily driven by the residential construction (new dwellings) and renovations sector.

It is supplied by imports from China, Thailand and other countries (including some imports by Tasman itself) and local production by Tasman (the only Australian producer).

5.3 Market structure

5.3.1 Australian Producers

The application was lodged by Tasman representing the entire Australian industry for like goods.

Tasman submitted detailed financial data in its application for the investigation. The Commission undertook verification of this data with Tasman.

5.3.2 Importers

The Commission performed a search of its database and identified over 350 potential importers of deep drawn stainless steel sinks.

The Commission identified 6 of the major importers (by volume) and sought their cooperation with the investigation through the completion of an Importer Questionnaire. Three of these entities cooperated with the Commission's request, and verification visits were undertaken to these entities:

- International Research and Marketing Corp. Pty. Ltd (IRMC);
- Everhard Industries Pty Ltd (Everhard); and
- GWA Group Ltd (GWA).

The Commission estimates the above importers collectively account for approximately 25% of the volume of the goods imported from China during the investigation period.

5.4 Market size and share

In its application, Tasman used import data (in units) sourced from the Australian Bureau of Statistics (ABS) and its own sales data to estimate the size of the Australian market for deep

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drawn stainless steel sinks for each financial year (FY)¹¹ during the period FY2009 to FY2013 inclusive.

The sales data submitted by Tasman in relation to its own sales has been verified by the Commission, as outlined in the *Australian Industry Verification Report* (available on the Public Record). This sales data was found to be reasonably complete, relevant and accurate.

For the purposes of its Consideration Report for the investigation, the Commission compared the import volumes in the application to data in the ACBPS import database for the relevant tariff classification and statistical code. This analysis showed that import volumes listed in the ACBPS database was similar to the ABS data relied upon by Tasman (which is itself derived by the ABS from ACBPS data) and the Commission considered the ABS data to be reasonably accurate for the purposes of its Consideration Report.

Since initiation of the investigation, the Commission has found that the ACBPS data (and hence the ABS data provided by Tasman) also includes importations of:

- free-standing laundry units (fully assembled or in kit form) that include lipped tubs - as outlined in Section PART III, the Commission considers that free-standing laundry units are not the goods; and
- a significant volume of fabricated sinks in the ACBPS data.

In its investigations with major importers of goods under the relevant tariff classifications, the Commission has found that imports of fabricated sinks are potentially between one quarter and one half of the total volume of imports made under the relevant tariff classification.

Consequently, the Commission considers that the ACBPS import data and submitted ABS data include large volumes of irrelevant data.

The Commission has examined the possibility of 'cleansing' the ACBPS data to remove these irrelevant imports, but notes that this is not practically possible as the only field which could reasonably be used for such a cleanse (i.e. the imported product description field) does not consistently provide the Commission with a definitive understanding of the imported product. For example, some descriptions are simply 'stainless steel sinks', which could logically refer to deep drawn stainless steel sinks (the goods) or fabricated products (not the goods).

In the absence of reasonably reliable import data, the Commission preliminarily considers that it is unable to accurately assess the market size of the Australian deep drawn stainless steel sinks industry for the purposes of this report. The Commission is therefore unable to make accurate observations as to market size and share over the injury analysis period.

The Commission considers that the above impacts the accuracy of the Commission's assessment as to whether the volume of dumped imported deep drawn stainless steel sinks was above negligible levels, as well as whether market size trends in the Australian market have corresponded with sales volume trends demonstrated by Tasman.

However, as discussed later in this report, the Commission has examined other indicators to develop an understanding of import volumes and market size trends over the injury analysis

¹¹ Being 1 July to 30 June.

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period, allowing it to make preliminary conclusions relevant to these matters. The lack of reliable market size data has limited bearing on the findings in this report.

6 DUMPING INVESTIGATION

6.1 Finding

The Commission finds that certain deep drawn stainless steel sinks exported to Australia from China during in the investigation period were dumped and that the volume of dumped goods was not negligible

The Commission's calculations of export prices, normal values and dumping margins in respect of deep drawn stainless steel sinks are at **Confidential Appendix 2**.

6.2 Introduction

6.2.1 Volume of exporters

Prior to initiation of this investigation, a preliminary search of the Australian Customs and Border Protection Service's (ACBPS) import database identified approximately 234 Chinese suppliers of the goods during the investigation period.

6.2.2 Exporter Questionnaires

On or shortly after the date of initiation, the Commission contacted each identified supplier of the goods and invited them to complete an Exporter Questionnaire, which requested necessary information to determine whether goods were exported at dumped and/or subsidised prices.

The Exporter Questionnaire sought information regarding the exporters' commercial operations and the goods exported to Australia, as well as information regarding the exporters' foreign and domestic sales, relevant costing information, receipt of subsidies and information relevant to the assessment of whether a market situation exists.

After notifying suppliers of the opportunity to cooperate with the investigation through completion of the Exporter Questionnaire, the Commission received responses from 17 parties.

6.3 Categorisation of exporters

Following receipt of the 17 completed Exporter Questionnaires, the Commission determined that it was appropriate to limit the number of exporters individually investigated to a sample of three cooperative exporters as it is considered not practicable to examine the exports of all responding exporters. This is provided for under Section 269TACAA of the Act. The percentage of the export volume to Australia represented by these three exporters is around 40%.

The Commission has, as provided under Section 269TACAA, used the information analysed for the sampled exporters to make findings as to whether all other exporters have dumped the goods exported to Australia, and/or received countervailable subsidies during the investigation period. The Commission classified all exporters from China other than the three named 'selected exporters' as either:

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- residual exporters; or
- uncooperative exporters.

These exporter categories, and the methods used to establish dumping margins by exporter categories, are summarised below.

Detailed information about the exporter sampling process used for this investigation is included in the Sampling Report on the Commission's Public Record (accessible at <http://www.adcommission.gov.au/>).

Prior to the publication of this SEF, the Commission received several submissions relating to the classification of exporters and the method of calculating dumping (and subsidisation) in relation to exporters. These submissions have been considered for the purposes of this SEF (see below discussion).

6.3.1 Selected exporters

The Commission has investigated the exportations of three 'selected exporters' of deep drawn stainless steel sinks from China:

SELECTED EXPORTERS
Zhuhai Grand Kitchenware Co., Ltd
Primy Corporation Limited
Zhongshan Jiabaolu Kitchen & Bathroom Products Co., Ltd

Table 3 – Selected exporters

This sample size represented those exporters that were responsible for the highest volume of exports that the Commission considers could reasonably be examined in this investigation (as detailed in the Sampling Report).

All three of these selected exporters submitted responses to the Exporter Questionnaire. The Commission visited the three selected exporters in July and August 2014 to verify the data these exporters submitted in their Exporter Questionnaire, and to identify and verify any other information relevant to this investigation. Verification reports for each of the exporters are available on the Public Record.

The Commission used the exporters' Exporter Questionnaires and information gathered and/or verified during the Commission's verification visits to determine dumping margins (and subsidy margin – see Chapter 7) for each selected exporter.

6.3.2 Residual exporters

Section 269T of the Act defines a residual exporter as:

an exporter of goods that are the subject of the investigation, review or inquiry, or an exporter of like goods, where:

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- (d) *the exporter's exports were not examined as part of the investigation, review or inquiry; and*
- (e) *the exporter was not an uncooperative exporter in relation to the investigation, review or inquiry.*

For the purposes of this investigation, the Commission considers that residual exporters are those exporters that sought to cooperate with the investigation by fulfilling the requirements of the Exporter Questionnaire, meet the Commission's definition of an 'exporter' (as outlined in Chapter 5 of the *Dumping and Subsidy Manual*)¹² but were not selected as part of the sample (ie not the three selected exporters).

For residual exporters, export prices, normal values, and dumping margins have been calculated using the weighted average of export prices and normal values for like goods of selected exporters from China. The entities considered by the Commission to be residual exporters are as follows:

RESIDUAL EXPORTERS
Jiangmen New Star Hi-Tech Enterprise Ltd.
Elkay (China) Kitchen Solutions Co., Ltd.
Franke (China) Kitchen System Co., Ltd
Xinhe Stainless Steel Products Co., Ltd
Zhongshan Xintian Hardware Co., Ltd.
Rhine Sinkwares Manufacturing Ltd. Huizhou
Yuyao Afa Kitchenware Co., Ltd
Jiangmen City HeTangHengWeiDa Kitchen & Sanitary Factory

Table 4 – Residual exporters

6.3.3 Uncooperative exporters

An 'uncooperative exporter' is defined under Section 269T(1) of the Act as 'an exporter who did not provide the Commissioner information considered relevant to the investigation, or an exporter that significantly impedes the investigation. This means that any exporters that did not submit Exporter Questionnaires, or submitted Exporter Questionnaires that did not meet the Commission's requirements, were deemed to be uncooperative.

For uncooperative exporters, given that these exporters have not provided sufficient information via a response to the Exporter Questionnaire, the Commission will use all relevant information and reasonable assumptions to calculate dumping margins.

¹² Available online at <http://www.adcommission.gov.au/reference-material/manual/default.asp>

6.3.4 Traders

The Commission also determined that five companies that submitted Exporter Questionnaires were actually ‘traders’ rather than exporters. The Commission did not allocate separate dumping margins for these companies because the dumping margin applicable to shipments via these companies is determined by the dumping margin applicable to the relevant exporter of those goods supplied via the trader.

The companies identified as ‘traders’ are as follows.

TRADERS
Flowtech Co Ltd
CM Engineering Solutions Pty Ltd
Franke Asia Sourcing Ltd
Xiaohui Trading Development Co., Ltd
Komodo Hong Kong Ltd
Anhui Feidong Import and Export Co., Ltd.

Table 5 – Trading entities (determined to not be exporters)

6.3.5 Interested party submissions – classification of exporters and calculation of measures by exporter category

Franke – request to receive an individual assessment of dumping

In a submission dated 18 September 2014, Franke (China) Kitchen System Co. Ltd (Franke) and its associated trading entity Franke Asia Sourcing Ltd, lodged a request that the Commission undertake an individual assessment of the dumping margin (and presumably subsidy margin) attributable to exports of the goods by Franke.

In making this submission, Franke observes the decision of the Commission to limit its investigation to three selected exporters, and that such a decision appears to have been based on a finding that further investigation into additional exporters of the goods would delay the timely completion of the investigation.

However, Franke observes that the Commission’s decision to limit its investigations to a sample of three exporters was made prior to being granted an extension in time to publish this SEF, and that the additional time provided by this extension now allows the Commission to broaden its investigation into additional exporters, and to not do so would be unreasonable.

On 2 September 2014, Tasman lodged a submission in opposition to Franke’s above request and claims.

The provisions of Section 269TACAA(2) of the Act provide that, where the Commission has undertaken a sampling exercise under Section 269TACAA(1):

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If information is submitted by an exporter not initially selected under subsection (1) for the purposes of an investigation, review or inquiry, the investigation, review or inquiry must extend to that exporter unless to so extend it would prevent its timely completion.

The Commission considers that, even with the extension in time to publish the SEF, any extension of the investigation to allow for an individual assessment of dumping and subsidisation of any exporters further to the three exporters originally selected, would prevent the timely completion of the investigation.

The Commission observes that the extension in time granted by the Parliamentary Secretary to publish this SEF took into account the number of sampled exporters, and the timing and resourcing required to complete investigations into those three exporters and publish the SEF by the extended date. The granting of the extension to the SEF, therefore, did not provide the Commission with the opportunity to extend its investigations into further exporters than the three exporters originally sampled, but rather with the required time to adequately complete investigations into those three exporters alone.

The Commission continues to consider Franke as a 'residual exporter' for the purposes of this investigation.

Komodo Hong Kong Limited (Komodo) – request to be treated as an 'exporter' and receive an individual assessment of dumping

In its submission dated 18 August 2014, Komodo submitted that it should be considered by the Commission to be an 'exporter' for the purposes of this investigation, as opposed to a 'trader' (as outlined above).

In submitting the above, Komodo contends that Komodo is 'not just an intermediary' in the export transaction (as assessed by the Commission in the PAD and above in this SEF), by virtue of such matters as:

- the Australian customer negotiates with Komodo, and the manufacturer (Zhongshan Xintian Hardware Co., Ltd. (Xintian) – a 'residual exporter') has no relationship with the Australian customer;
- the exported products are designed by Komodo;
- accessories are purchased by Komodo and provided to the manufacturer; and
- Komodo's profit margin shows that it is not just an intermediary.

In a later submission (dated 8 September 2014) Komodo requests that the company be considered a 'selected exporter' for the purposes of the investigation, and be granted an individually-assessed dumping (and presumably subsidy) margin as opposed to the 'residual exporter' rates. Komodo asserts this will make the Commission's sample more representative of the exports from China, and include an assessment of 'tight corner radius sinks' that Komodo supplies (as Komodo understands that none of the three selected exporters supply such products). Komodo submits that it is important to include tight corner radius sinks amongst the sampled volume if the Commission determines that these products should be subject to anti-dumping measures.

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The request to use actual sales data submitted by Komodo in determining the level of dumping attributable to goods supplied by that company was also made by Abey, in its submission of 30 April 2014.

The Commission's policy for determining what entity is the 'exporter' of goods subject to its investigations is set out in the *Dumping and Subsidy Manual* as follows:

- a principal in the transaction located in the country of export from where the goods were shipped and who knowingly placed the goods in the hands of a carrier, courier, forwarding company, or their own vehicle for delivery to Australia;
- a principal will be a person in the country of export who owns, or who has previously owned, the goods but need not be the owner at the time the goods were shipped.

The Commission has reviewed the information contained in Komodo and Xintian's response to the Exporter Questionnaire and notes that these responses show that, even though Komodo negotiates price and is the named 'supplier' to the Australian customer, Xintian is aware of the fact that the goods it is producing and selling via Komodo are destined for export, and Xintian knowingly passed the goods over to a freight company for delivery to Australia. The Commission therefore continues to consider that Xintian is the true 'exporter' of the goods.

Consequently, the dumping (and subsidy) margin applicable to the goods supplied via Komodo is the rate applicable to the exporter of the goods supplied by Komodo, which is Xintian.

Having confirmed that Xintian is the exporter of the goods supplied through Komodo, the Commission has considered whether Xintian should be considered a 'selected exporter', noting the intention of Komodo's submission that the goods it supplies to Australia be subject to individual assessment.

The Commission notes Komodo's submission that it is necessary to include its goods amongst the Commission's sample to ensure tight corner radius sinks are specifically assessed. As outlined above, the Commission's assessment is that tight corner radius sinks are the goods subject to this investigation.

The Commission does not consider it necessary to include the full range of exported goods to Australia within its sampled export volume. To do so would suggest that every model and variation of the goods exported to Australia must be included in any sample made by the Commission, which would (particularly in the case of deep drawn stainless steel sinks that come in a vast array of models and variations) undermine the purpose of sampling and limiting the Commission's investigation to a number of exporters and volume of exports that can reasonably be investigated. The Commission therefore does not consider that its selection of 'selected exporters' should be extended to include Xintian for the reason of including tight corner radius sinks in its sample.

After determining the above, the Commission has considered whether it is able to extend the investigation to include Xintian in line with the provisions of Section 269TACAA(2) of the Act. However, for the same reasons outlined above in relation to Franke's request for an individual assessment of dumping and subsidisation, the Commission considers that it is unable to extend its investigation to provide Xintian with such an individual assessment.

The Commission considers that:

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- its sample of ‘selected exporters’ should be limited to the three exporters listed above;
- Xintian should not be granted an individual assessment of dumping and subsidisation for the purposes of this investigation;
- Komodo should not be considered an ‘exporter’ for the purposes of this investigation; and
- Komodo’s goods supplied to Australia and manufactured by Xintian are subject to the rate applicable to Xintian.

Logan Arms – request to be subject to the residual rate of anti-dumping measures

In a submission dated 28 August 2014, Logan Arms Pty Ltd (Logan Arms) requested that amendments be made to the dumping securities implemented following the issuing of a PAD, to ensure that goods imported by that entity were subject to the rate of anti-dumping measures applicable to residual exporters, as opposed to the ‘uncooperative and all other’ rate.

Although submitted in relation to preliminary dumping securities, it is considered that Logan Arms intends to extend its submission to any interim dumping duties that may be implemented following the conclusion of this investigation as well.

In making its submission, Logan Arms claims that:

- as an importer, the company was requested to complete an Importer Questionnaire but chose not to do so based on (incorrect) advice reportedly received from the Commission that all information in such a response must be published on the Public Record and to allow this would be a breach of the commercial arrangements with Logan Arms’ customer; and
- it is unfair to penalise the imports of Logan Arms and other importers by implementing a higher rate of anti-dumping measures in relation to goods imported by those companies than that applicable to goods imported by other entities.

In relation to the first point, the Commission has no record of any such advice being provided to Logan Arms. The Commission’s standard practice is to advise interested parties that only non-confidential version of information received by the Commission will be placed on the Public Record, which is contrary to the advice that Logan Arms submits it received. However, Logan Arms has not submitted any evidence of such advice alongside their submission.

The Commission notes that the decision of Logan Arms to not respond to the Importer Questionnaire has had no impact on the Commission’s decision to determine that the goods imported by that company should be subject to the uncooperative rate of measures. As outlined above, this determination relates directly to whether the exporter itself cooperated with the Commission’s investigation by adequately completing a response to the Exporter Questionnaire. In the case of Logan Arms’ supplier, no such Exporter Questionnaire response was received.

The Commission therefore continues to consider that goods exported to Australia by Logan Arms’ exporter should be subject to the ‘uncooperative and all other exporter’ rate of anti-

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dumping measures and that the Commissioner should recommend as such to the Parliamentary Secretary in the Final Report for this investigation.

The Commission does not consider that it is appropriate or necessary to comment on the 'fairness' of implementing a higher rate of anti-dumping measures in relation to goods supplied by uncooperative exporters than to goods supplied by other exporters. As detailed in this report, the determination that certain exporters have been uncooperative with the Commission's investigation and the manner in which the Commission has determined the rate of anti-dumping measures applicable to these parties is consistent with all applicable legislation, policy and practice.

SHD – request to not be considered to have imported dumped goods

In a submission dated 28 April 2014, SHD Group Pty Ltd (SHD) submitted pricing data that it asserts proves that goods it has imported have not been at dumped prices.

The Commission notes that, in order to fully assess whether goods from a particular exporter have or have not been sold to Australia at dumped prices, the Commission requires the detailed full export and domestic sales and cost to make and sell data (and other information) to be submitted in a completed response to the Exporter Questionnaire. It is unable to accept sub-sets of export price and domestic sales data such as that provided by SHD as complete evidence that goods have not been dumped into the Australian market.

Noting that the Commission has undertaken a sampling exercise in any case to determine whether the goods have been dumped by individually investigating three selected exporters, the Commission is unable to accept the information submitted by SHD as evidence that the goods that company has imported have not been at dumped prices.

6.4 Market situation assessment

6.4.1 Tasman's application

In its application, Tasman submitted that domestic prices of deep drawn stainless steel sinks in China are not suitable for the determination of normal values under Section 269TAC(1) of the Act, as a particular market situation in relation to those goods renders those domestic selling prices unsuitable.

The application in effect submits that:

- constructed normal values should be used as a result;
- in constructing normal values and determining the cost of manufacture of deep drawn stainless steel sinks in line with Regulation 180(2) of the *Customs Regulations 1926* (the Regulations),¹³ the cost of stainless steel does not reasonably reflect a competitive market cost for that input (relying on the same influences identified that cause the alleged particular market situation) and should be substituted with a competitive market cost; and

¹³ All references to any Regulation within this report are to the *Customs Regulations 1926* unless specifically stated otherwise.

- a MEPS world composite price is an appropriate price for substituting domestic cold-rolled stainless steel costs.

6.4.2 Applicable legislation

Subsection 269TAC(1) provides that the normal value of any goods exported to Australia is the price paid or payable for sufficient volumes of like goods sold domestically in the ordinary course of trade in arm's length transactions.

However, Section 269TAC(2)(a)(ii) provides that the normal value of the goods exported to Australia cannot be determined under subsection (1) where the Parliamentary Secretary is satisfied that:

...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 (1).

Where such a market situation exists, normal value cannot be established on the basis of domestic sales. Instead, the normal value may be determined on the basis of a cost construction (Section 269TAC(2)(c)) or third country sales (Section 269TAC(2)(d)).

6.4.3 Interested party submissions

Throughout the investigation, the Commission has received numerous submissions from interested parties addressing the issue of the existence (or lack of) a particular market situation in the Chinese deep drawn stainless steel sinks market.

Noting the Commission's assessment below that a particular market situation assessment is not relevant in the case of deep drawn stainless steel sinks, the key points of these submissions have not been detailed in this SEF. However, the Commission considers that several matters raised in these submissions relating to the assessment of market situation are relevant considerations in determining the reasonableness of the costs incurred by Chinese exporters of deep drawn stainless steel sinks in constructing normal values under Section 269TAC(2)(c). These submissions have been considered in this context.

6.4.4 The Commission's assessment

As outlined above, Section 269TAC(2)(a)(ii) provides that, where a particular market situation exists, domestic sales of like goods cannot be used for determining normal values under Section 269TAC(1).

In addition, Section 269TAC(2)(a)(i) provides that the normal value of the goods exported Australia cannot be determined under subsection (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).

In these cases, the Act provides that normal value cannot be established on the basis of domestic sales (in the same manner as where a particular market situation exists). Instead, the normal value may be determined on the basis of a cost construction (Section 269TAC(2)(c)) or third country sales (Section 269TAC(2)(d)).

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In its investigations with the selected exporters, the Commission has determined, for all three exporters, that there is an absence of sales of like goods in China that would be relevant for determining normal values under Section 269TAC(1). This is due to the fact that, during its verification with the three selected exporters, the Commission observed that there were key differences between goods sold domestically and for export that rendered these sales unsuitable for use in determining normal values for the exported goods. This included differences in:

- finish;
- inclusion of drainer boards and number/configuration of bowls;
- insulation; and
- the range of accessories included with the sink.

Noting the nature and number of the above differences, and the limitations of the exporters' cost data, it is considered that an accurate and meaningful method cannot be found to adjust domestic selling prices to make them comparable with export prices

The differences outlined above have also been supported by discussions with importers, and a submission lodged by International Research and Marketing Corp. Pty Ltd dated 10 September 2014, in which that company highlights the differences between sinks it imports to Australia and those sold by its manufacturer on the domestic market.

Having made this determination, the assessment as to whether a particular market situation exists in the Chinese deep drawn stainless steel sinks market is no longer relevant, as domestic sales of like goods cannot be used to determine normal values in any case.

As a result, the Commission has not made an assessment of the existence or not of a particular market situation in the Chinese deep drawn stainless steel sink market in this SEF.

6.5 Establishing normal values – third country sales or construction

Following the above preliminary finding that domestic sales are not suitable for use in determining normal value due to the lack of relevant domestic sales of deep drawn stainless steel sinks, the Commission has examined the possibility of establishing normal value using either:

- sales of deep drawn stainless steel sinks to third countries by Chinese exporters (Section 269TAC(2)(d)); or
- constructing normal values (Section 269TAC(2)(c)).

In their responses to the Exporter Questionnaire, Chinese exporters of the goods have provided:

- aggregate third country sales data (not split into model or in line-by-line detail); and

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- detailed domestic and export (to Australia) cost to make and sell (CTMS) data, split into month and model-level detail.

During its investigations with the three selected exporters, the Commission assessed the suitability of using third country sales of deep drawn stainless steel sinks in determining normal values under Section 269TAC(2)(d). In the case of all three selected exporters, the Commission determined that third country sales were not a viable option for determining normal values in relation to the goods, for reasons similar to those that make domestic sales unsuitable for determining normal values. That is, there are significant differences in physical characteristics between third country sales and Australian that make third country sales not relevant for determining normal value.

Consequently, the Commission has undertaken the construction of normal values under s269TAC(2)(c) of the Act, and has done so in accordance with the conditions of Regulation 180, 181 and 181A of the Regulations (relevant aspects of which are outlined below).

6.6 Constructed normal values – outline

6.6.1 Applicable legislation, policy and practice

Section 269TAC(2)(c) provides that:

- (c) *except where paragraph (d) applies, the sum of:*
 - (i) *such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and*
 - (ii) *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—such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale;*

The construction of normal values under Section 269TAC(2)(c) is required to be undertaken in accordance with the conditions of Regulation 180, 181 and 181A of the *Customs Regulations 1926* (the Regulations)¹⁴.

To determine costs of manufacture or production, Regulation 180(2) requires that if:

- an exporter or producer keeps records relating to like goods that are in accordance with generally accepted accounting principles (GAAP) in the country of export; and
- those records reasonably reflect competitive market costs associated with the production or manufacture of like goods;

the Parliamentary Secretary must work out the cost of production or manufacture using information set out in the exporter or producer's records.

It is the Commission's policy and practice that, where the conditions of Regulation 180(2) are not met, the cost records kept by that exporter are not required to be used in working out their costs, and the Commission may resort to other information to calculate these costs.

¹⁴ As required by Sections 269TAC(5A) and 269TAC(5B)

6.7 Reasonableness of costs in constructing normal values

6.7.1 Introduction

As outlined above, in addressing the normal value of the goods, Tasman's application focussed on allegations that a particular market situation exists in the Chinese deep drawn stainless steel sinks market, and that normal values should be constructed as a result.

The application goes on to assert that this construction of normal values should take account of the fact that the cost of stainless steel coil incurred by exporters in China does not reasonably reflect a competitive market cost for that input (relying on the same influences identified that cause the alleged particular market situation) and should be substituted with a MEPS composite price.

Although the Commission has determined that constructed normal values should be used due to the lack of relevant domestic sales (as opposed to the existence of a particular market situation), the Commission notes that considerations as to the reasonableness of costs incurred by Chinese exporters of the goods remain relevant. This is due to the operation of the applicable legislation outlined below.

6.7.2 Commission's assessment

As outlined above, Regulation 180(2) requires that if an exporter keeps records in accordance with the appropriate GAAP, and those records reasonably reflect competitive market costs associated with the production of like goods, then the cost of production must be worked out using the exporter's records.

The Commission's preliminary assessment of exporters' data has found that the records of Chinese exporters of the goods have been kept in accordance with the relevant GAAP.

However, the Commission's preliminary view is that stainless steel (coil and sheet) prices in China are affected by Government of China (GOC) influences in the iron and steel industry, and hence do not reasonably reflect competitive market costs, and should be replaced by a competitive market substitute. A detailed assessment of this issue is at **Non-confidential Appendix 3**.

The Commission considers that the GOC influence in the Chinese iron and steel industry has likely impacted the Chinese stainless steel sector, regardless of whether the entity producing the stainless steel has any state ownership (noting that some of the findings relating to the iron and steel industry in China relate to GOC owned entities notably implementing the policies and directives of the GOC).

In light of the above, the Commission has considered how best to determine what a competitive market substitute price for stainless steel in China should be, having regard to all available information.

Taking into account all available options for a competitive market substitute, the Commission considers that, in the case of stainless steel costs incurred by Chinese exporters of the goods, it is reasonable to apply the same 'benchmark' price considered to be representative of 'adequate remuneration' for the purposes of determining a benefit under Subsidy Program 1 - Raw Materials Provided by the Government at Less than Fair Market Value.

The Commission has therefore determined that the most reasonable option available is a monthly MEPS composite price for stainless steel coil using the monthly reported MEPS North American and European prices alone (excluding the Asian price). This was calculated using the monthly reported data for the investigation period available from MEPS at <http://www.meps.co.uk/>.

As outlined on MEPS' web page, the stainless steel prices published by that company represent:

- stainless steel coil (unslit); and
- undelivered (ex-works) prices.

Details of this benchmark and the assessment of other possible benchmarks are detailed in Non-Confidential Appendix 3.

6.7.3 Calculation of uplift

To determine the competitive market costs for stainless steel, the Commission compared the benchmark MEPS composite stainless steel coil prices to purchase prices incurred by Chinese exporters of deep drawn stainless steel sinks to arrive at an individual percentage difference to be applied to the raw materials cost recorded in the exporters' records.

Where these records reported that the stainless steel cost was a delivered price (not ex-works like the MEPS price), the Commission included an additional cost for delivery in China in the MEPS composite price (based on verified information for the domestic delivery costs of stainless steel coil gathered during the Commission's investigations with selected exporters). Similarly, where the exporter has made purchases of slit stainless steel coil (as opposed to unslit coil provided in the MEPS price), the Commission included an additional 'slitting cost' component in the MEPS substitute price, based on the verified difference between purchases of slit and unslit stainless steel coil in China as verified by the Commission with the selected exporters.

In each case, application of the MEPS composite benchmark resulted in an uplift to exporters' costs, i.e. the actual stainless steel costs incurred by exporters were lower than the benchmark amount. The average uplift to exporters' costs was around 30%.

The MEPS composite price forms **Confidential Appendix 4** of this report.

6.8 Determination of profit for constructed normal values in China

Regulation 181A provides that, where reasonably possible, profit for constructed normal values must be worked out using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.

Accordingly, the Commission has calculated a weighted average net profit, measured as a percentage mark-up on full cost to make and sell, for each Chinese selected exporter, using the verified cost to make and sell data after performing the abovementioned amendments to the recorded costs incurred in relation to stainless steel raw materials. The Commission

observes that even when the cost of stainless steel raw materials is uplifted, all three selected exporters achieve profits at not insignificant levels.

6.8.1 Jiabaolu submission – profit using recorded cost to make and sell not appropriate

In a submission to the Commission following publication of its Exporter Visit Report¹⁵ Jiabaolu claimed that the profit used by the Commission in constructing normal values was unreasonable. It claimed that the cost to make and sell individual models was not a proper reflection of the costs for the determination of profit due to the manner in which accessory costs were allocated to different models. Jiabaolu provided information in relation to their pricing methodology wherein it claims that the cost of the sink and the actual cost of accessories included with a particular model are taken into account when determining prices. Due to the nature of Jiabaolu's costing records the Commission has had to use an allocation methodology (set out in the Exporter Visit Report) to allocate the pool of accessory costs across models, rather than the actual accessory cost for each model.

Jiabaolu claimed that the Commission should use its overall profit margin on all sales, which is significantly lower than the profit margin used by the Commission.

As outlined above, where reasonably possible, in determining profit for constructed normal values, the Commission should use profit worked out using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade. The Commission considers that, in the case of Jiabaolu, such a calculation is reasonably possible, and so profit has been worked out as outlined above at Section 6.8.

The Commission does not consider the company's overall profit a suitable profit for the purpose of determining a normal value, which should be reflective of a profit on domestic sales. The company's sales include export sales (to Australia and third countries) and sales of products that are not the goods, such as fabricated sinks.

While the Commission agrees that the cost to make and sell individual models is not a precise representation of each model cost, in particular the accessory cost, it is a reasonable representation given the limitations of the financial data. Even taking into account that the allocation of the pool of accessory costs to domestic models is not precise, when the total cost to make and sell of all domestic models is compared to the total sales revenue from all domestic models the profit margin is not dissimilar to the profit margin derived using the Commission's usual approach.

6.8.2 Zhuhai Grand's submission – profit reasonableness

In a submission dated 3 November 2014, Zhuhai Grand raised various issues relating to the calculation of its profit in constructing normal values. This included claims that:

- the profit ratio seems unreasonably high when compared to the overall company profit for the investigation period;

¹⁵ Dated 17 September 2014

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- the sales in the domestic market are low in volume, leading to their selling prices being ‘random’ and potentially resulting in an unrealistic profit being calculated;
- the delivery terms on the domestic market are ‘random’ and the costs of inland transport is not included in the CTMS used to determine profit, meaning that delivered sales on the domestic market may have an overstated profit when determined by comparison to the adopted CTMS;
- the allocation of selling, general and administrative costs is unreasonable (being based on revenue instead of sink units) and this could be driving an unreasonable profit;
- overtime compensation payments originally included in the CTMS for the last two quarters of the investigation period and removed for the purposes of the visit report should be re-included in determining the CTMS used for calculating profit (i.e. its exclusion would overstate the profit); and
- in calculating an amount for profit for use in the company’s constructed normal values, the Commission should use the full CTMS of the company including the uplift applied to cold-rolled stainless steel coil, rather than the CTMS before this uplift.

As outlined above, where reasonably possible, in determining profit for constructed normal values, the Commission uses profit worked out using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade. The Commission considers that, in the case of Zhuhai Grand, such a calculation is reasonably possible, and so profit has been worked out as outlined above at Section 6.8.

The Commission dismisses Jiabaolu’s claim that profit on domestic sales made in the ordinary course of trade in the domestic market should be excluded because they are low in volume and erratic, noting that the Commission has performed ordinary course of trade and sufficiency tests on this data, and has found that a sufficient volume of those sales exists for the purposes of constructing normal values.

In terms of the randomness of delivery terms and the exclusion of these costs from CTMS driving an unreasonable profit, the Commission observes that the volume of delivered sales made by Zhuhai Grand on the domestic market in the investigation period that were delivered (and hence potentially overstating the company’s profit calculations) was small. Consequently, this issue could not mathematically impact the profit calculation and is thereby dismissed.

The allocation of selling, general and administrative expenses has been reviewed. It is considered that, in the case of deep drawn stainless steel sinks, the most reasonable method of allocating selling, general and administrative expenses is in fact by units sold, as submitted by Zhuhai Grand. This is due to the fact that the level of selling effort and administrative effort experienced by sink manufacturers would likely be the same regardless of the revenue generated for each individual sink (i.e. a more expensive sink would incur the same selling and administrative effort as an inexpensive sink, as although there is more sales effort to sell a more expensive sink to the final user/installer, this is not borne by the manufacturer, but rather entities further down the distribution chain).

The Commission has therefore determined that Zhuhai Grand’s selling, general and administrative costs calculations should be amended to allocate these expenses based on

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units of sinks sold. The Commission has made these amendments to the company's CTMS calculations and followed these through the company's dumping margin calculations.

In addition, the Commission notes Zhuhai Grand's objection to its profit on sales made in the ordinary course of trade being calculated by reference to its CTMS prior to including the CTMS uplift in determining. As outlined above, it is the Commission's intention that the uplifted costs be used in determining profit for Chinese exporters, which is contrary to the approach in Zhuhai Grand's Exporter Visit Report. This has been corrected for the purposes of this SEF.

The above changes to Zhuhai Grand's CTMS and approach to profit have resulted in a minor decrease of Zhuhai Grand's dumping margin from that assessed in the Verification Visit Report.

6.8.3 Amendment to Primy's dumping margin calculations

In assessing the above profit matters raised by Zhuhai Grand, the Commission has observed that the same issues of:

- allocating selling, general and administrative expenses based on revenue and not units sold; and
- applying CTMS prior to including the CTMS uplift was used in determining profit for Primy.

As outlined above, the Commission considers:

- the most reasonable method of allocating selling, general and administrative costs for sinks exporters is on the basis of units sold; and
- the uplifted CTMS (for reasonably competitive market stainless steel costs) should be used to determine profit for Chinese exporters of deep drawn stainless steel sinks.

Consequently, amendments have been made to Primy's CTMS and profit calculations. In making these amendments, the Commission has found that it is not in possession of verified sales units for all of Primy's products during the investigation period (i.e. the Commission possesses the sales units for deep drawn stainless steel sinks but not fabricated sinks) and hence the next best available data, the production units for all of Primy's sinks during the investigation period, has been used to allocate selling, general and administrative expenses.

The combined impact of the above changes is to increase Primy's dumping margin from that reported in the company's Exporter Visit Report.

6.9 Dumping margins for selected exporters

6.9.1 Primy Corporation Limited (Primy)

Export price

The Commission considers that, in respect of export sales to Australia during the investigation period:

- the goods have been exported to Australia otherwise than by the importer;

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- the goods have been purchased by the importer from the exporter; and
- the purchases of the goods by the importer were arm's length transactions.

Export prices have thus been established in accordance with Section 269TAB(1)(a) as the price paid by the importer less any charges incurred after exportation.

Normal value

Normal values were established in accordance with Section 269TAC(2)(c) of the Act using Primy's quarterly weighted average cost to make and sell data (revised for stainless steel coil cost uplift), by model, and an amount for profit based determined as outlined in Section 6.8 above.

A positive adjustment of 8% was made to normal value in relation to the residual export VAT expense that is incurred for certain export sales but not domestic sales, along with other adjustments considered necessary for fair comparison with export prices, in accordance with Section 269TAC(9).

Dumping margin

The dumping margin for Primy was established in accordance with Section 269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The dumping margin for Primy is 15.0%

6.9.2 Zhongshan Jiabaolu Kitchen & Bathroom Products Co., Ltd (Jiabaolu)

Export price

The Commission considers that:

- the goods have been exported to Australia otherwise than by the importer;
- the goods have not been purchased by the importer from the exporter (being purchased by the importer from Flowtech which is not considered to be the exporter); and
- the purchases of the goods by the importer were arm's length transactions.

Export prices have thus been established in accordance with Section 269TAB(1)(c), having regard to all the circumstances of the transaction, as the price paid by the importer less any charges incurred after exportation.

Normal value

Normal values were established in accordance with Section 269TAC(2)(c) of the Act using Jiabaolu's quarterly weighted average cost to make and sell data (revised for stainless steel

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cost uplift), by model, and an amount for profit based determined as outlined in Section 6.8 above.

A positive adjustment of 8% was made to normal value in relation to the residual export VAT expense that is incurred for certain export sales but not domestic sales in relation to sales to Australia via one of the two identified Australian export sales channels. No adjustment for VAT differences was made in relation to export sales made via the second Australian export sales channel.

Other adjustments were made that were considered necessary for fair comparison with export prices, in accordance with Section 269TAC(9).

Dumping margin

The dumping margin for Jiabaolu was established in accordance with Section 269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The dumping margin for Jiabaolu is 22.5%.

Correction to calculations in Exporter Visit Report

During its examination of exporter dumping margin calculations for the purposes of this SEF, the Commission identified a calculation error in the dumping margin assessment made for the purposes of Jiabaolu's Exporter Visit Report.

Specifically, the Commission had inadvertently included an incorrect calculation in Jiabaolu's domestic selling, general and administrative costs such that inapplicable export costs were being included in this calculation.

The Commission has corrected this error for the purposes of this SEF. The overall effect of this amendment was to decrease Jiabaolu's dumping margin from that assessed in the company's Exporter Visit Report.

Claims made by Jiabaolu in response to the Exporter Visit Report

On 17 September 2014, Jiabaolu and the entities it sells goods to Australia through (Flowtech Co Ltd and Zhongshan Flowtech Co Ltd) lodged a submission in response to that company's Exporter Visit Report. Some matters raised in that submission have been examined elsewhere in this report if applicable. The remaining items are addressed below.

1) The exporter's business model

Jiabaolu submitted that its Australian exports business model should be taken into account by the Commission when determining whether the goods exported to Australia by the company were at dumped prices.

Jiabaolu highlighted the fact that it operates under an exclusive supply arrangement with its Australian customer, where price is set and only modified with movements in raw material

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prices. Jiabaolu also noted that it is therefore not able to ‘enlarge its sales to Australian market by dumping...[as] neither the sales price nor the sales quantity in under the control of the Exporter’.

The Commission considers that the operation of the business model described by Jiabaolu does not automatically preclude the goods exported to Australia from having been sold at dumped prices. The Commission’s assessment as to whether the goods exported by Jiabaolu have been dumped is made based on the objective analysis of the company’s relevant financial data. This analysis has been performed for the purposes of this SEF.

2) *Discarding of model costs*

Jiabaolu noted that, in the Exporter Visit Report and associated analysis, the Commission made amendments to Jiabaolu’s manufacturing costs by model recorded in the company’s accounts and submitted in its response to the Exporter Questionnaire. These amendments sought to mitigate observed anomalies (‘spikes’) in Jiabaolu’s costs calculations for certain models, which the company submitted are likely due to accounting corrections at model level to account for errors in the previous month’s recorded manufacturing costs accompanied by low production volumes in the corrected months.

This amendment is discussed in detail in Section 5.1.4 of Jiabaolu’s Exporter Visit Report, available on the Commission’s Public Record.

In response to the approach taken in the Exporter Visit Report, Jiabaolu has submitted that the Commission’s recalculation of Jiabaolu’s costs rejects the existing model costs kept in Jiabaolu’s normal course of business, which it considers is not acceptable. Jiabaolu reproduced Article 2.2.1.1 of the World Trade Organisation (WTO) Anti-Dumping Agreement (AD Agreement), which states:

For the purpose of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration. Authorities shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation provided that such allocations have been historically utilized by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs....

Jiabaolu also reproduced Regulation 181(2) of the *Customs Regulations 1926* (the Regulations), which it observes implements Article 2.2.1.1 (it is observed that the exporter likely intended to reproduce Regulation 180(2), which relates to manufacturing costs, whereby 181(2) refers to selling, general and administrative costs).

Jiabaolu went on to submit that the Commission should therefore not disregard the model-level manufacturing costs as submitted by Jiabaolu in their entirety, but instead a ‘limited adjustment’ to correct the issues identified with costs could be. Jiabaolu submits that it is adequate to make an adjustment only to certain models or months where the production cost is abnormal.

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Jiabaolu also submits that the Commission could use Jiabaolu's full period of investigation (i.e. yearly weighted average) manufacturing costs for impacted models in its analysis instead of the monthly costs submitted for those models.

Jiabaolu further explains that the Commission's approach of re-calculating costs is erroneous, as it does not take into account allocations of costs to work-in-progress, which Jiabaolu performs in its ordinary course of business.

The Commission considers that neither Article 2.2.1.1 nor the provisions of the Regulations limit the amendment of costs submitted by an exporter, even when kept in accordance with applicable accounting principles in the ordinary course of business, where the costs as submitted/recorded do not reasonably reflect the competitive market costs associated with the manufacture and sale of like goods. Where the Commission considers unreasonable elements exist in an exporter's costs, the Commission is able to make amendments where to do so would result in the costs being more reasonably reflective of the cost to make and sell those goods.

This ability to amend costs as recorded by exporters is discussed in further detail at Sections 6.6 and 6.7, in the context of replacing costs not considered to be reasonably reflective of competitive market costs with a reasonable substitute. However, the Commission does not consider this ability to amend costs is limited to situations where costs are not reasonably reflective of 'competitive market costs', but also where costs do not reasonably reflect the costs associated with the production and sale of the goods or like goods in general. In such cases, these costs do not 'reasonably reflect the costs associated with the production and sale of the product under consideration' as provided for by Article 2.2.1.1.

In this instance, the Commission has observed 'spikes' in Jiabaolu's recorded costs of manufacture, which Jiabaolu has attributed to accounting corrections (see above and the Jiabaolu Exporter Visit Report). The Commission considers that these spikes have resulted in Jiabaolu's manufacturing costs not reasonably representing the true cost to make and sell those goods, and hence an amendment to the incurred (and submitted) costs is deemed necessary.

In terms of the methodology applied by the Commission to make this amendment, the Commission has considered whether there is a more reasonable method to apply to amend these costs to make them reasonably reflective of the costs incurred in the manufacture of deep drawn stainless steel sinks. However, based on the information available, there is no more reasonable method of amending Jiabaolu's submitted costs of manufacture than the methodology applied in the company's Exporter Viist Report.

In particular, the Commission has considered the following:

- Attributing a portion of the relevant monthly model's costs to the previous month's model costs (where Jiabaolu submits it should have been more accurately posted). The Commission is not in possession of verified information to confirm that this is the reason for the cost spikes. In addition, the Commission is not able to perform this re-attribution accurately, as it is not clear what proportion of the cost component that causes a spike should be attributable to the previous month, and which should remain in the month where the correction was made.

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- The use of investigation period (as opposed to quarterly) weighted average costs in cases where 'spikes' have occurred, as submitted by Jiabaolu. The Commission considers that this does not satisfy the requirement to perform ordinary course of trade comparisons based on costs relating to particular sales at the point in time at which they were made, and hence cannot be accepted.

Consequently, the Commission has continued to accept the approach taken in the Exporter Visit Report as the most reasonable way of re-calculating Jiabaolu's costs of manufacture to more accurately reflect the company's cost to make deep drawn stainless steel sinks.

3) *'Backing out' of accessories*

In its response to the Exporter Questionnaire and during the verification visit, Jiabaolu submitted that, in conducting a comparison between the company's normal values and export prices, the Commission should 'back out' the cost and price of accessories supplied alongside Jiabaolu's deep drawn stainless steel sinks. This is due to the fact that Jiabaolu is unable to arrive at costs for comparison with export prices that accurately include the cost of accessories sold with each deep drawn stainless steel sinks. The issue of allocation of Jiabaolu's accessories is discussed in detail in Section 5.1.5 of Jiabaolu's Exporter Visit Report (including a re-allocation of accessories undertaken by the Verification Team to more accurately allocate accessories across markets).

In the company's Exporter Visit Report, the Commission does not take the approach submitted by Jiabaolu, and includes both the cost and price of accessories in undertaking normal value calculations for the company (see Section 11.1 of Jiabaolu's Exporter Visit Report).

Jiabaolu's submission in response to the Exporter Visit Report disputes the approach taken by the Commission. Jiabaolu submits that it considers that the Commission has adopted the approach in the Exporter Visit Report due to an assessment that, because the goods under consideration encompasses deep drawn stainless steel sinks whether or not they were sold with accessories, it is unable to remove accessories from its assessment of Jiabaolu's dumping margin.

Jiabaolu disagrees with this approach, submitting that it confuses the two issues of 'goods description' and 'comparison method'. Jiabaolu stresses that it considers that, to ensure an 'apples to apples' comparison, the costs of accessories must be backed out of the equation.

Jiabaolu highlights that the inclusion of accessory costs in the calculation is impacted by the fact that accessories are not accurately allocated to each model in Jiabaolu's costs (i.e. they are allocated based on steel weight consumed in the production of each model, instead of an accurate actual allocation of which accessories relate to which model).

The Commission considers that there is no provision for it to divide the products sold by Jiabaolu to Australia into segments of sinks and accessories and conduct a dumping assessment based wholly on the sink itself, as the sink with accessories combined is intrinsically 'the goods' as a whole.

The Commission has therefore maintained the approach of including the cost and price of these accessories in calculating the dumping margin for Jiabaolu.

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4) Profit calculation

Jiabaolu's submission addresses the reasonableness of the level of profit used in determining Jiabaolu's dumping margin. The approach to determining Jiabaolu's profit for the purposes of constricting normal values for that company is detailed in Section 9.3 of the company's Exporter Visit Report.

Jiabaolu reproduces Article 2.2 of the AD Agreement, which provides that, in constructing normal values, a reasonable amount for profit may be included in the construction.

Jiabaolu also refers to Regulation 181A(4), which reads:

- (4) If:
- (a) *the Minister uses a method of calculation under paragraph (3)(c) [construction] to work out an amount representing the profit of the exporter or producer of the goods; and*
 - (b) *the amount worked out exceeds the amount of profit normally realised by other exporters or producers on sales of goods of the same general category in the domestic market of the country of export;*
- the Minister must disregard the amount by which the amount worked out exceeds the amount of profit normally realised by other exporters or producers.*

[Emphasis added by Jiabaolu in its submission]

Jiabaolu highlights that any profit used by the Commission must therefore be 'reasonable and must not exceed the amount of profit which would normally be realised by the manufacturers in the same industry'. Jiabaolu infers that it does not consider the amount of profit determined by the Commission using the above methodology meets either of these requirements.

Jiabaolu also highlighted issues with the Commission's approach taken in the company's Exporter Visit Report, being:

- the calculation of profit is necessarily impacted by the Commission's approach to Jiabaolu's costs (reallocation to eliminate the impact of cost spikes) as discussed above;
- issues with its domestic rebates which may be impacting profit analysis; and
- the actual profit ratio that Jiabaolu aims to achieve on its Australian sales is much lower than the amount calculated by the Commission.

Jiabaolu has since suggested using the whole company's profit from its income statement and has submitted calculations for this purpose.

Jiabaolu's submission in relation to profit is supported by a submission made by GWA dated 18 September 2014, which submits what it considers to be a more reasonable level of profit for deep drawn stainless steel sinks in China.

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As highlighted by Jiabaolu, requirements for determining profit for the purpose of constructing a normal value are provided for by Regulation 181A. The Commission's policy and practice relating to the determination of profit is also contained in the *Dumping and Subsidy Manual*.

The Commission observes that Regulation 181A(4) only operates where the Commission has calculated profit under paragraph (3)(c) of that Regulation, which is where, if profit is unable to be calculated under paragraph 2 or any of the preceding provisions in paragraph 3, the Commission may use 'any other reasonable method and having regard to all relevant information'. In contrast, the Commission has calculated Jiabaolu's profit in line with Paragraph 2 of Regulation 181A, and Paragraph 4 therefore does not apply in Jiabaolu's case.

Where it is possible and reasonable to do so, the amount of profit to be used in constructing normal values should be established in accordance with Paragraph 181A(2) of the Regulations, relying on actual sales and cost to make and sell data of exporters to determine a profit on domestic sales of like goods made in the ordinary course of trade. As outlined above, the Commission used this method to determine Jiabaolu's profit for the purposes of the Exporter Visit Report.

In light of Jiabaolu's submission, the Commission has considered whether this approach is reasonable, or whether another approach provided for by the Regulations should be used.

In the case of rebates, the Commission notes that Section 7.4.4 of Jiabaolu's Exporter Visit Report envisages that Jiabaolu's inability to accurately allocate rebates to the applicable invoice they relate to may result in a higher profit being calculated on sales of like goods made in the ordinary course of trade. However, the Exporter Visit Report also highlights Jiabaolu's acknowledgement of this, and its inability to correct this issue.

Due to the nature of the issue associated with Jiabaolu's rebates, the Commission is unable to accurately assess the true impact of this issue on Jiabaolu's profit calculations. Regardless, the Commission does not consider that this issue with Jiabaolu's sales data is likely to impact a profit assessment based on sales of like goods in the ordinary course of trade to such an extent that such an assessment is no longer reasonable.

In relation to the amendment to Jiabaolu's costs used to determine profit, the amendments made to the costs as submitted have been applied to seek to arrive at more reasonable costs for the purposes of Jiabaolu's dumping assessment (discussed in detail above). It is considered that the amended costs are more reasonable for use in determining Jiabaolu's profit than the uncorrected costs with 'spikes' included, which the Commission considers results in an inaccurate assessment of Jiabaolu's profit. Thus, although Jiabaolu is correct in observing the Commission's approach to amending its costs has impacted the assessment of profit for constructed normal value, the Commission considers that it has done so in a way to make that assessment more reasonable and accurate, and does not lead to the conclusion that the approach is unreasonable.

The Commission does not consider Jiabaolu's request that the whole company's profit figure be used as the constructed normal value profit to be reasonable in the circumstances. This profit necessarily includes profit for sales of products that were not the goods (particularly fabricated sinks, which make up a large proportion of Jiabaolu's sales volumes) as well as sales to all markets (including exports). This profit can therefore not reasonably be considered

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to be reflective of the profit achieved on sales of like goods in the domestic market, which is the intended profit for constructed normal values.

5) 'Other' adjustments

a) Coil slitting costs

For the purposes of the Jiabaolu Exporter Visit Report (and the reports of other selected cooperating exporters) the Commission determined a slitting cost extra to adjust the MEPS composite stainless steel price based on a contractual price between one exporter and a supplier of slit and un-slit 304 stainless steel, to determine a price for slit stainless steel (as the MEPS price only represented stainless steel in coil form).

Jiabaolu contended that this contracted price may not reflect the commercial reality of the slitting costs incurred by exporters, and instead submitted that the Commission use the actual verified difference in prices incurred.

The Commission agrees with Jiabaolu's submission that a single contracted price may not accurately reflect the cost of slitting stainless steel actually incurred in China across exporters and transactions. The Commission has therefore determined a per tonne adjustment to the MEPS benchmark price to arrive at a benchmark for slit 304 stainless steel, based on the annual average verified price difference between slit and un-slit product purchased at the same time by the one exporter from the same supplier of slit and un-slit stainless steel (being the only exporter whose data allowed for this isolation and comparison).

b) VAT rebate adjustment

Jiabaolu refers to the method by which the Commission has applied an adjustment to that exporter's normal value for differences in VAT amounts refunded between domestic and export sales of deep drawn stainless steel sinks. In performing that adjustment in the Exporter Visit Report, the Commission applied a higher rate of upwards adjustment to normal value for sales made via 'export channel 2', where it was considered that any VAT rebate reclaimed does not in fact pass to the exporter, but to an intermediary involved in the export process of sales via that channel.

Jiabaolu disagrees with this assessment as, regardless of the sales channel a VAT 'loss' is incurred, and hence an adjustment should be made to each channel. Jiabaolu has since advised that this VAT loss incurred by the intermediary is recorded in that company's selling, general and administrative costs.

In Jiabaolu's Exporter Visit Report the Commission made an adjustment to normal value to account for the selling, general and administrative costs incurred by the two intermediaries used by Jiabaolu to export its goods to Australia. As the VAT loss is included in these selling, general and administrative costs, the Commission considers that the VAT loss on sales made via channel 1 is already accounted for in Jiabaolu's dumping calculations. No further adjustment is considered to be warranted.

The Commission has therefore maintained the approach of adjusting Jiabaolu's normal value for differences in VAT amounts between domestic and export sales taken in the Exporter Visit Report in calculating the dumping margin for Jiabaolu.

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c) Domestic selling expenses

Jiabaolu notes that a downwards adjustment to normal value has not been performed in Jiabaolu's dumping calculations to account for domestic marketing expenses incurred in selling like goods domestically that are not attributable to Australian sales. This is due to the fact that the Commission considers that Jiabaolu has been unable to quantify this adjustment accurately.

Jiabaolu submits that this has been quantified in the company's Exporter Questionnaire in its 'other costs' calculation for domestic sales, and hence the adjustment should be made.

The Commission considers that a downwards adjustment to normal value to account for domestic selling expenses is warranted. This amendment has been made in Jiabaolu's revised dumping margin calculations.

d) Allocation of selling, general and administrative costs

As noted in Jiabaolu's Exporter Visit Report, the Commission has undertaken a re-allocation of Jiabaolu's selling, general and administrative costs to allocate these based on sales units, as opposed to sales weight (as submitted).

Jiabaolu has contested this approach, submitting that it considers the original approach of allocating these costs based on sales weight is more appropriate than using units. This is due to the fact that inland transport costs are linked to weight as heavier models are generally more expensive and packed in paper boxes, which cost more to transport than stacked sinks. Further, Jiabaolu reiterates the point (made in the Exporter Visit Report) that more 'selling effort' goes in to heavier, more expensive sinks and thus more selling, general and administrative costs should be allocated to these sinks.

The Commission rejects Jiabaolu's submission that heavier sinks carry greater sales effort. The reasons for this are detailed in the Exporter Visit Report, and relate to the fact that the sales effort to sell more expensive sinks does not sit with Jiabaolu but its customers and further entities downstream in the sale chain.

The Commission considers that all selling, general and administrative expenses except transportation (discussed below) are more reasonably allocated on the basis of sales units than on sales weight, and has not amended the approach taken in the Exporter Visit Report.

The Commission accepts that it may be the case that heavier sinks sold by Jiabaolu incur greater transportation fees (as these can generally be attributed to the weight of the goods transported to the physical volume they involve e.g. one truckload). However, transportation costs are only one cost within a multitude of selling, general and administrative costs incurred by Jiabaolu (and the trading intermediaries) in selling the goods to Australia or on the domestic market. In fact, the Commission's assessment shows that Jiabaolu's domestic selling costs (which are not comprised solely of transportation costs) account for less than 10% of total selling, general and administrative costs incurred when selling products in China. The bulk of Jiabaolu's incurred selling, general and administrative costs are not transportation expenses.

The Commission therefore considers that the impact of isolating and reallocating transport expenses incurred by Jiabaolu on the basis of weight would be insignificant in any case.

6.9.3 Zhuhai Grand Kitchenware Co., Ltd (Zhuhai Grand)

Export price

The Commission considers that:

- the goods have been exported to Australia otherwise than by the importer;
- the goods have been purchased by the importer from the exporter; and
- the purchases of the goods by the importer were arm's length transactions.

Export prices have thus been established in accordance with Section 269TAB(1)(a) as the price paid by the importer less any charges incurred after exportation.

Normal value

Normal values were established in accordance with Section 269TAC(2)(c) of the Act using Zhuhai Grand's quarterly weighted average cost to make and sell data (revised for stainless steel coil cost uplift), by model, and an amount for profit based determined as outlined in Section 6.8 above.

A positive adjustment of 8% was made to normal value in relation to the residual export Value Added Tax (VAT) expense that is incurred for certain export sales but not domestic sales, along with other adjustments considered necessary for fair comparison with export prices, in accordance with Section 269TAC(9).

Dumping margin

The dumping margin for Zhuhai Grand was established in accordance with Section 269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The dumping margin for Zhuhai Grand is 21.1%.

Correction to calculations in Exporter Visit Report

On 3 November 2014, Zhuhai Grand lodged a submission in response to that company's Exporter Visit Report. Various issues were raised in that submission that relate both to the accuracy and reasonableness of the methodology applied in calculating dumping for that exporter. This submission is discussed in detail below.

As outlined below, for the purposes of this SEF the Commission has made some amendments to the dumping calculations for Zhuhai Grand following its consideration of this submission. The Commission has also made amendments to the calculation of Zhuhai Grand's profit (discussed at Section 6.8 above).

The overall effect of these amendments was to decrease Zhuhai Grand's dumping margin from that assessed in the company's Exporter Visit Report.

Claims made by Zhuhai Grand in response to the Exporter Visit Report

As noted above, Zhuhai Grand lodged a detailed submission in response to its Exporter Visit Report.¹⁶ Where appropriate, some matters raised in that submission have been examined elsewhere in this report. The remaining items are addressed below.

1) *'Unreasonable methodology'*

In its submission, Zhuhai Grand objects to the Commission's methodology of calculating constructed normal values for that company by uplifting Zhuhai Grand's incurred costs of stainless steel raw materials to align with a reasonably competitive market substitute.¹⁷

Specifically, Zhuhai Grand submits that, in constructing normal values, the AD Agreement provides that costs shall normally be calculated on the basis of records kept by the company under investigation, providing the records are in accordance with the relevant GAAP and reasonably represent the costs associated with the production and sale of the product under consideration.

Zhuhai Grand submits that, as the Commission was satisfied that the company's cost records submitted to the investigation were complete and relevant and kept in line with the relevant GAAP, constructed normal values for that company must be constructed based on those records as kept by the company. Zhuhai Grand asserts that the Commission's practice of uplifting the stainless steel raw material costs recorded by the company is therefore not permissible in the circumstances by the AD Agreement.

Zhuhai Grand also submits that, in a combined investigation into dumping and subsidisation, the issue of GOC influences on raw material costs should be more suitably addressed in the countervailing investigation, rather than as an issue in the dumping investigation.

The Commission's ability to amend costs as recorded by exporters where it is considered that they do not reasonably reflect competitive market costs associated with manufacturing the goods under consideration is discussed in detail at Sections 6.6 and 6.7 of this report. In summary, the Commission considers that the AD Agreement and the provisions of the Regulations provide that, even in cases where an exporter's records are kept in accordance with the GAAP and they reflect the costs physically incurred by that exporter in manufacturing the goods, where those records do not represent reasonably competitive market costs for the production of the goods, the costs records as kept by the exporter do not need to be adopted.

As outlined in Section 6.7.2, the Commission considers that the cost of stainless steel raw materials incurred (and recorded) by Chinese exporters of the goods are not reasonably reflective of competitive market costs for that input as a result of GOC influences, and hence the Commission is not required to use these costs as recorded in constructing normal values.

The Commission disagrees with Zhuhai's submission that issues relating to GOC influence on raw materials are to be dealt with in the context of a countervailing investigation rather than a

¹⁶ Dated 3 November 2014.

¹⁷ As the same methodology applies for all exporters of the goods, this submission thereby extends to all exporters.

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dumping investigation. As outlined above, there is provision for the Commission to take account of government influences in raw material costs in the context of a dumping investigation. Additionally, the Commission is able to assess government impact on raw material costs in the context of a subsidy investigation, when determining whether raw materials have been provided at subsidised prices. There is nothing that precludes this consideration from happening concurrently in both investigations.

However, as outlined in Section 12.2.2, when it comes to imposing anti-dumping measures following such an investigation, the Commission removes any 'double-count' that may result from this concurrent consideration of government influences, to avoid remedying the impact of these twice.

2) Calculation errors

Zhuhai Grand identified several matters which it considered to be calculation errors in the Commission's calculation of dumping for that company in its Exporter Visit Report. Each has been addressed separately below.

a) Errors in sufficiency test

Zhuhai Grand highlighted an error in the calculation of the sufficient volume of sales in the ordinary course of trade in determining the company's normal values. The Commission acknowledges this error and has made the necessary amendments to the company's normal value calculations.

b) VAT adjustment

Zhuhai Grand submits that the Commission's methodology applied to calculate the company's upwards adjustment to normal values to account for differences in VAT between the domestic and export markets. Specifically, Zhuhai Grand submits that:

- the VAT adjustment should be calculated on the 'actual FOB value' rather than the constructed FOB normal value with profit included; and
- the formula applied by the Commission is incorrect.

Regarding the first point, the Commission does not agree with Zhuhai Grand's submission that the VAT adjustment should be calculated on actual (achieved) FOB value. In constructing Zhuhai Grand's normal value, it is the Commission's intention to derive a normal value for the goods if they had been sold domestically, and to undertake appropriate adjustments to that normal value to account for differences between export and domestic sales of those goods if sold at that normal value. It is therefore logical that any adjustment applied to normal value for differences in VAT across markets be applied to the full constructed normal value, determining the rate of the adjustment had the goods been exported at that normal value.

Relating to the second point, the Commission has examined the formula applied by the Verification Team for the purposes of the Exporter Visit Report and is satisfied of its accuracy.

c) Triple count of unit accessories costs

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Zhuhai Grand submitted that the Commission applied an adjustment to its normal values of 'unit ancillary cost', which constituted 'triple count of the ancillary cost'.

The Commission acknowledges this error, which was due to inadvertently adding accessory costs, rather than subtracting accessory costs when calculating the domestic selling price of sinks. This error has been amended in Zhuhai Grand's dumping margin calculations.

- d) The upwards adjustment for the difference between export sale and domestic sale is double count

Zhuhai Grand claims that the Commission has made an upwards adjustment to its normal value for 'export sales', and that this includes inland freight, port charges and customs fees that are already included in the normal value and hence the addition of this adjustment is a double-count.

The Commission observes that Zhuhai Grand's assessment is incorrect. As outlined in the company's Exporter Visit Report, all freight expenses have been deducted from the company's selling, general and administrative expenses used in determining its constructed normal value specifically to avoid any such double count. The adjustment that the company is concerned about is to account for additional export only expenses incurred on export sales, specifically exhibition fees and insurance.

Zhuhai Grand also makes claims in its submission that the export inland transport adjustment applied for the purposes of the Exporter Visit Report is 'excessive'. It appears that Zhuhai Grand intends to submit that this should be offset by a reduction of domestic inland freight costs but this is 'difficult to quantify'. The Commission notes that, during the verification visit with Zhuhai Grand, the company was given the opportunity to identify any domestic only expenses and transport costs for this purposes, however, it did not identify this item and therefore the Commission has not been able to verify the veracity of Zhuhai Grands claim. The Commission's approach remains unchanged in this regard as a result.

6.10 Determination of dumping margins – residual exporters

The preliminary dumping margins for residual exporters have been determined as a comparison between the weighted average of export prices with the corresponding weighted average normal values of the three selected exporters in accordance with Section 269TACB(2)(a).

The dumping margin for residual exporters is 19.1%.

6.11 Determination of dumping margin – uncooperative and all other exporters

Uncooperative and all other exporters did not provide reliable information on export price or normal value to the investigation. These exporters did not make themselves known to the Commission and did not respond to the Exporter Questionnaire

6.11.1 Export price

The Commission examined and considered a range of options for determining export price for uncooperative and all other exporters, including:

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- export price data from the ACBPS import database;
- export price data from importer visits where that data related to exports from the uncooperative and all other exporters;
- export price data from Tasman's application; and
- export price data from the selected exporters.

The import data contained in the ACBPS import database does not clearly differentiate the separate models of the goods, or indeed whether the imported goods are deep drawn stainless steel sinks at all. This means that unit export prices derived from that data are a function of the product mix, and therefore not a reliable basis for calculating export price by finish. Further discussion of issues with the data contained in the ACBPS database is discussed in Section 8.6.

The export price data verified in importer visits in relation to uncooperative exporters does not include broad and detailed coverage of the goods exported by the uncooperative and all other exporters. Rather, that data pertains mainly to the exports of selected exporters. While it may be possible to identify small volumes of the goods exported by some of the selected uncooperative exporters, this would represent only a small proportion of the total volume of deep drawn stainless steel sinks exported by those exporters.

Export prices submitted in Tasman's application for a dumping duty notice and a countervailing duty notice were based on data obtained from the Australian Bureau of Statistics (ABS). Like the data contained in the ACBPS import database, this source of export price information is also affected by product mix, and precludes accurate assessment of export price by model.

The Commission considers the most directly relevant and therefore best information available would be the export price data obtained and verified in relation to the selected exporters.

After having regard to all relevant information, export prices for all uncooperative exporters were established in accordance with Section 269TAB(3) of the Act. Specifically, the Commission used the lowest weighted average export price for the entire investigation period from the selected exporters, excluding any part of that price that relates to post-exportation charges.

6.11.2 Normal value

The Commission examined and considered a range of options for determining normal value for uncooperative and all other exporters, including:

- normal value data from the application; and
- normal value data from the selected exporters.

The normal values submitted in the application were based on constructions, using MEPS 'world composite' stainless steel prices and Tasman's own conversion costs, selling general and administrative expenses amended to reflect Chinese costs for these items, and an amount

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for profit based on Chinese statistics for average ferrous metal fabricated products manufacturers.

While these normal values were found by the Commission to be suitable for initiation purposes, it has since undertaken verification of exporter data in China supplied by the selected exporters (all of whom cooperated with the investigation). As explained in the Commission's *Dumping and Subsidy Manual*, the Commission considers that where there are cooperating and uncooperative exporters, the most directly relevant and therefore best information would be that obtained from those cooperating.

After having regard to all relevant information, normal values for all uncooperative and all other exporters were established in accordance with Section 269TAC(6) of the Act.

Specifically, the Commission used the highest weighted average normal value for the entire investigation period from the selected exporters.

6.11.3 Dumping margins

The dumping margin for uncooperative and all other exporters from China was established in accordance with Section 269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. The dumping margin for uncooperative and all other exporters is 58.8%.

7 SUBSIDY INVESTIGATION

7.1 Finding

The Commission finds that countervailable subsidies have been received in respect of certain deep drawn stainless steel sinks exported to Australia from China during the investigation period.

The subsidy margin was negligible in relation to exports by Jiabaolu and Primy, and the Commission proposes to terminate the countervailing investigation as it relates to exports by those two exporters.

The Commission finds that the volume of subsidised goods exported to Australia during the investigation period was not negligible.

7.2 Investigated programs

7.2.1 Original eight programs

Tasman alleged in its application that Chinese producers of the goods benefited from eight countervailable subsidies. These alleged subsidies referred to programs for the provision of goods, grants, and beneficial taxation schemes.

In support of these allegations, Tasman relied on:

- the May 2012 final determination of the Canadian Border Services Agency (CBSA) in relation to its investigation into deep drawn stainless steel sinks from China;¹⁸
- the March 2012 final determination of the CBSA in relation to its investigation into certain pup joints exported from China;¹⁹
- a Specialty Steel Industry of North America report released April 2007 into “Chinese Government Subsidies to Stainless Steel Industry”;
- analysis of relevant Chinese legislation and decrees, including:
 - *Law of the People's Republic of China on Enterprise Income Tax (2007)*;
 - *Law of State-Owned Assets of the Enterprises*;
 - *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise*; and

¹⁸ CBSA *Statement of Reasons concerning the making of final determinations with respect to the dumping and subsidizing of certain stainless steel sinks originating in or exported from the People's Republic of China*, 4214-32 AD/1392, 4218-31 CVD/129, 9 May 2012 (Non-Confidential Attachment C-1.1.1 of the application).

¹⁹ CBSA *Statement of Reasons concerning the making of final determinations with respect to the dumping and subsidizing of certain pup joints originating in or exported from the People's Republic of China*, 4214-31/AD/1390, 4218-30/CV/127, 27 March 2012 (Non-Confidential Attachment C-1.1.3 of the application).

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- *Decree of the State Council of the People's Republic of China No. 378 – Interim Relations on Supervision and Management of State-owned Assets of Enterprises;*
- analysis of stainless steel price data by MEPS and Metal Bulletin Research;
- analysis of New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures of China dated 21 October 2011 (WTO Notification); and
- Canadian International Trade Tribunal's determinations, including those relating to subsidisation of galvanised steel wire originating in or exported from China, and the dumping and subsidizing of steel piling pipe originating in or exported from China.

All of these alleged programs were investigated by the CBSA in its investigation into stainless steel sinks exported from China, and found to be countervailable subsidies received by selected exporters²⁰ of those goods in that investigation.

As a result of its assessment of the information provided by Tasman in its application, the Commission initiated an investigation into eight alleged subsidy programs.

To assess these programs further in relation to deep drawn stainless steel sinks exported to Australia, the Commission included questions relating to each program in the Government Questionnaire, which was forwarded to the GOC shortly after initiation of the investigation.

A response to the Government Questionnaire was received from the GOC on 19 May 2014.

7.2.2 Programs 9 – 24

During examination of information provided in Exporter Questionnaire responses, and at verification visits by the Commission with selected Chinese exporters of the goods, the Commission was provided with information that indicated benefits were received, or were able to be received, by exporters of the goods under several new subsidy programs that were not included in the eight alleged programs already being examined by the Commission.

Through this process, the Commission identified 16 additional subsidy programs that were not identified in Tasman's initial application.

Following an assessment of this new information, the Commission considered that the information available established reasonable grounds for the publication of a countervailing duty notice for these programs.

To assess these programs further, the Commission sent the GOC the Supplementary Government Questionnaire (SGQ) and an addendum (adding a program omitted from the SGQ inadvertently) to ask for information and documentation in relation to these new potential programs.

²⁰ Exporters that provided responses to the CBSA's information requests and cooperated with its investigations.

The GOC provided a response to the Supplementary Government Questionnaire on 19 September 2014.

7.3 Legality of investigating new programs

7.3.1 GOC's submissions

As outlined above, the Commission sent the GOC a SGQ seeking information and documentation regarding the 16 new potential programs.

In its response to the SGQ, the GOC objected to the Commission's "initiation" of investigations into the 16 alleged new subsidy programs, stating the GOC's belief that, in initiating these investigations, the Commission has violated the WTO *Agreement on Subsidies and Countervailing Measures* (SCM Agreement).

The SGQ was accompanied by a submission from the GOC (dated 19 September 2014) that further elucidated the GOC's points on this matter. In this submission, the GOC referred to Article 11.1 of the SCM Agreement, which reads:

Except as provided in paragraph 6, an investigation to determine the existence, degree and effect of any alleged subsidy shall be initiated upon a written application by or on behalf of the domestic industry.

The GOC highlights that Article 11.6 goes on to state:

If, in special circumstances, the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of the existence of a subsidy, injury and causal link, as described in paragraph 2, to justify the initiation of an investigation.

The GOC then outlines the provisions of Article 11.2, which provides that written applications for the investigation of countervailable subsidisation must include sufficient evidence of subsidisation, injury and causal link, and that simple assertions of these matters are insufficient and must be substantiated by relevant evidence.

The GOC then refers to Article 11.3 that reads;

The authorities shall review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation.

The GOC continues by contending that:

- As the investigation itself was the result of a written application, the 16 alleged new programs are not supported by this application and must not be initiated upon unless a new written application has been lodged in relation to those programs.

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- The applicant has provided no evidence in relation to these programs as required by Article 11.2, and hence Article 11.3 has been violated as the Commission has not had regard to a written application in relation to these programs.
- Article 11.2 requires there to be sufficient evidence provided by the applicant (in the case of an Article 11.1 application) or the Commission (in the case of an Article 11.6 self-initiation) and does not place this burden on exporters or the GOC. The new programs are based on information gathered from exporters and the SGQ places a burden on the GOC to provide information in relation to them.
- Even if the Commission were able to undertake a new subsidy investigation in the way it has during the course of an investigation, the Commission cannot be satisfied on the evidence before it that there is sufficient evidence to prove the countervailability of the new subsidies, or if material injury and causation requirements are satisfied.
- The GOC goes on to note Section 269TC(10) of the Act (outlined below), which it contends is not consistent with WTO rules by allowing the Commission to initiate an investigation without a written application form.
- Further, the GOC contends that, even if Section 269TC(10) is not WTO-inconsistent, it clearly requires the Commission to be satisfied that the new subsidies are countervailable before it investigates them' and this evidences does not exist.

Section 269TC(10) of the Act permits the Commission to investigate new potentially countervailable subsidies that are identified during the course of an investigation, stating that:

"If, during an investigation in respect of goods the subject of an application under section 269TB, the Commissioner becomes aware of an issue as to whether a countervailable subsidy (other than one covered by the application) has been received in respect of the goods, the Commissioner may examine that issue as part of the investigation."

7.3.2 Commission's assessment

The Commission has addressed the various components of the GOC's submission on this matter separately below.

Need for a new written application

The GOC considers that, once an investigation is initiated either via Article 11.1 or 11.6, the investigation is limited to those programs listed in the application. That is, where the investigation results from a written application, a further written application must be made to extend that investigation to additional programs.

The Commission has examined the provisions of the SCM Agreement and finds nothing to support the GOC's position on this point. The object and purpose of countervailing duties as provided under Part v of the SCM Agreement is to offset any subsidy bestowed directly or indirectly upon the manufacture, production or export of any merchandise. This is supported by Articles 10, 19.1, 19.4, and 21.1 of the SCM Agreement and Article VI:3 of GATT 1994.

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Further, the purpose of Article 11 of the SCM Agreement relates to the requirement to (i) have an application (ii) from the domestic industry (iii) which include sufficient evidence of injurious subsidised imports. In order to justify initiation, the authorities must review the accuracy and adequacy of the evidence. There is a distinction between the initiation and the conduct of the investigation.

The Commission does not find any inconsistency between Section 269TC(10) or the SCM Agreement on these grounds.

Need to be satisfied of all elements prior to initiating

The GOC contends that, in order for it to self-initiate investigations into new subsidy programs in the manner undertaken (noting the GOC contends that there is no such power without a written application – see above), the Commission must be satisfied that there is ‘sufficient evidence’ of the existence of a countervailable subsidy and that this has resulted in material injury to the industry.

Putting aside that the Commission does not agree with the GOC that is self-initiating investigations into new subsidy programs, the Commission agrees that having received an application from industry, it was required to review the accuracy and adequacy of the evidence in order to justify the initiation of the investigation. Section 269TC(10) allows for the Commission to investigate additional subsidy programs during the course of an investigation where it has become aware of an ‘issue as to whether a countervailable subsidy (other than one covered by the application) has been received in respect of the goods’. However, there is no requirement in Section 269TC(10) that the Commission be further satisfied that these new subsidy programs are causing material injury to the Australian industry in order to initiate an investigation into such programs.

Having already assessed that there appears to be reasonable grounds to determine that material injury has been caused by countervailable subsidisation (in initiating the subsidy investigation originally), the Commission’s role is limited to establishing there appear to be reasonable grounds to find:

- a countervailable subsidy exists; and
- that subsidy has been received in respect of the goods.

Section 269TC(10) does not expressly outline the standard of proof that applies to initiating investigations into additional programs. However the Commission considers it reasonable to apply the same standard of proof in initiating investigations into potential new programs as applies for initiating the investigation as a whole. This is that there ‘appear to be reasonable grounds’ for the publication of a countervailing duty notice in relation to those programs – as required by Section 269TC(1) of the Act.

In assessing the 16 new alleged subsidy programs and investigating those programs, such an assessment was performed by the Commission prior to forwarding the GOC the SGQ for completion.

This assessment was based on the limited information the Commission had been able to gather from selected exporters in relation to the 16 new programs and examined:

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- the nature of the programs to determine if there appeared to be reasonable grounds to determine that they constituted a subsidy (in each case finding they appeared to be financial contributions from the GOC that conferred a benefit on recipients);
- the title of the program and what was known about its eligibility criteria (to assist in determining specificity and hence countervailability);
- the fact that many of these programs had been actually received by selected exporters of deep drawn stainless steel sinks in respect of the goods and hence conferred benefit in relation to the goods; and
- the fact that, where the programs had not been accessed by exporters of deep drawn stainless steel sinks, there appeared to be reasonable grounds to find that they may have been accessed by other exporters of deep drawn stainless steel sinks.

Following this assessment, the Commission was satisfied that there appeared to be reasonable grounds to publish a countervailing duty notice in relation to the 16 new programs, and commenced investigations into them as a result.

Conclusion

The Commission does not consider that its actions in investigating 16 new subsidy programs during the investigation were either inconsistent with the SCM Agreement or in breach of the requirements of that agreement and the Act itself. Section 269TC(10) of the Act and allow for the Commission to investigate alleged subsidy programs in the manner undertaken by the Commission.

7.4 Summary of countervailable programs

After assessing all relevant information available, the Commission has found that countervailable subsidies have been received in respect of deep drawn stainless steel sinks exported to Australia from China, under 23 countervailable subsidy programs.

The findings in relation each investigated program are outlined in the below table.

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Program Number	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
Program 6	International Market Fund for Small and Medium-sized Export Companies	Grant	Yes
Program 7	Reduced tax rate for productive FIEs scheduled to operate for a period not less than 10 years	Income Tax	No
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

Table 6 – subsidy programs investigated following Tasman's application

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7.5 Subsidy margins

7.5.1 Selected exporters

The Commission found that the selected exporters received financial contributions in respect of the goods that conferred a benefit under 24 programs.

Exporter-specific subsidy margins have been calculated for each selected exporter with reference to the specific programs that conferred a benefit on each exporter.

7.5.2 Residual exporters

In the absence of GOC advice regarding the individual enterprises that had received financial contributions under each of the investigated subsidy programs, the Commission has determined subsidy margins for residual exporters based on the weighted average countervailable subsidisation determined for all selected exporters.

7.5.3 Uncooperative exporters

In the absence of GOC advice regarding the individual enterprises that had received financial contributions under each of the investigated subsidy programs, the Commission has had regard to the available relevant facts and determines that uncooperative exporters have received financial contributions that have conferred a benefit under 24 programs found to be countervailable in relation to deep drawn stainless steel sinks.

7.5.4 Preliminary margins

Table 7 below shows the Commission’s individual subsidy margin calculations for selected exporters, residual exporters, and collectively for uncooperative and all other exporters:

Exporter / Manufacturer	Preliminary subsidy margin
Zhuhai Grand Kitchenware Co., Ltd	10.3%
Primy Corporation Limited	Negligible
Zhongshan Jiabaolu Kitchen & Bathroom Products Co., Ltd	Negligible
Jiangmen New Star Hi-Tech Enterprise Ltd.	9.7%
Elkay (China) Kitchen Solutions Co., Ltd.	9.7%
Franke (China) Kitchen System Co., Ltd	9.7%
Xinhe Stainless Steel Products Co., Ltd	9.7%
Zhongshan Xintian Hardware Co., Ltd.	9.7%
Rhine Sinkwares Manufacturing Ltd. Huizhou	9.7%
Yuyao Afa Kitchenware Co., Ltd	9.7%
Jiangmen City HeTangHengWeiDa Kitchen & Sanitary Factory	9.7%
Uncooperative and all other exporters	11.5%

Table 7 - subsidy margins for all exporters

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Note: the above calculations in relation to Zhuhai Grand Kitchenware Co., Ltd have changed slightly from the Exporter Visit Report for that exporter due to amendments in the methodology adopted, as detailed in Non-Confidential Appendix 5.

The Commission's findings in relation to each program investigated (including the method of calculation of subsidy margins) are outlined in **Non-Confidential Appendix 5**.

The calculation of subsidy margins for each selected, residual and uncooperative exporter is at **Confidential Appendix 6**.

7.5.5 Proposed termination of investigation – negligible exporters

Section 269TDA(2) requires that the Commission must terminate a countervailing investigation in relation to an exporter if countervailable subsidisation for that exporter is determined to be negligible.

In relation to goods exported from China (a developing country), countervailable subsidisation is negligible if, when expressed as a percentage of the export price of the goods, that subsidisation is not more than 2%.

The Commission notes that for goods exported by Jiabaolu and Primy during the investigation period, the subsidy margin is negligible. The Commission is therefore proposing to terminate the subsidy investigation into these exporters.

8 ECONOMIC CONDITION OF THE INDUSTRY

8.1 Preliminary finding

Based on an analysis of the information contained in the application and obtained and verified during the Commission's verification visit with Tasman, the Commission considers that the Australian industry has experienced injury in the form of:

- lost sales volumes;
- price depression;
- reduced profit and profitability;
- reduced capacity utilisation;
- reduced capital investment;
- reduced value of production assets;
- reduced revenue; and
- reduced employment numbers.

The assessment of the economic condition of the industry is contained in **Confidential Appendix 7**.

8.2 Introduction

This section of the report outlines the economic condition of the Australian industry and a preliminary assessment as to whether the industry has suffered injury.

8.3 Approach to injury analysis

The injury analysis detailed in this section is based on financial information submitted by Tasman and verified by the Commission.

8.3.1 Costs data

As discussed in Section 6.4 of the Australian Industry Visit Report, Tasman's CTMS data submitted to the investigation is not considered to be suitable for analysing the economic performance of its manufactured deep drawn stainless steel sinks.

8.3.2 Sales data

The Commission considered in the Australian Industry Visit Report that there are limitations with the sales data provided by Tasman that place restrictions on the conclusions that can reasonably be drawn in relation to price depression (noting that issues with price suppression already exist due to the limitations of Tasman's CTMS data, though this issue would likely similarly impact price depression analysis otherwise).

As discussed in that report, Tasman's sales data for periods other than that covered by Tasman's detailed sales listing (July 2012 – December 2013) was provided on aggregate by bowl number (volume and value), but did not differentiate models or ranges within models (and hence product tiers or other product characteristics). For the purposes of this SEF, the Commission considers the limitations of Tasman's sales data impacts its ability to perform an accurate assessment of price depression. This issue is discussed further in this Chapter.

8.4 Legislative framework

Under s. 269TG of the Act, one of the matters that the Parliamentary Secretary must be satisfied of in order to publish a dumping duty notice is that, because of the dumping, material injury has been, or is being, caused or has been threatened to the Australian industry producing like goods.

8.5 Commencement of injury, and analysis period

Tasman alleged in its application that material injury caused by dumped and subsidised imports of deep drawn stainless steel sinks from China commenced in the 2010 financial year when Chinese imports increased in volume by 30.8 per cent from the previous year and the market share of dumped and subsidised exports grew by 12 per cent over that period. In this same period, Tasman submitted that the market share held by the Australian industry declined by 20 per cent.

The Commission notes the above percentages reported by Tasman are based on Tasman's assessment of ABS data, which includes significant volumes of irrelevant information.

As specified in *Consideration Report 238*, the Commission has set the investigation period as 1 January 2013 to 31 December 2013, and the period for assessing the condition of the Australian industry from 1 January 2009.

However, due to the format of information able to be readily provided by Tasman, charting and analysis in this report has been completed on a financial year basis for the five years 2009 to 2013, as well as for calendar year 2013. The Commission notes the overlap between FY2013 and calendar year 2013 (six months), but considers the inclusion of calendar year 2013 data useful to see the most recent trends in the available data.

8.6 Volume trends

8.6.1 Sales Volume

Figure 1 below depicts Tasman's total sales volume of its manufactured deep drawn stainless steel sinks on the Australian market during FY2009 – FY2013, and calendar year 2013.

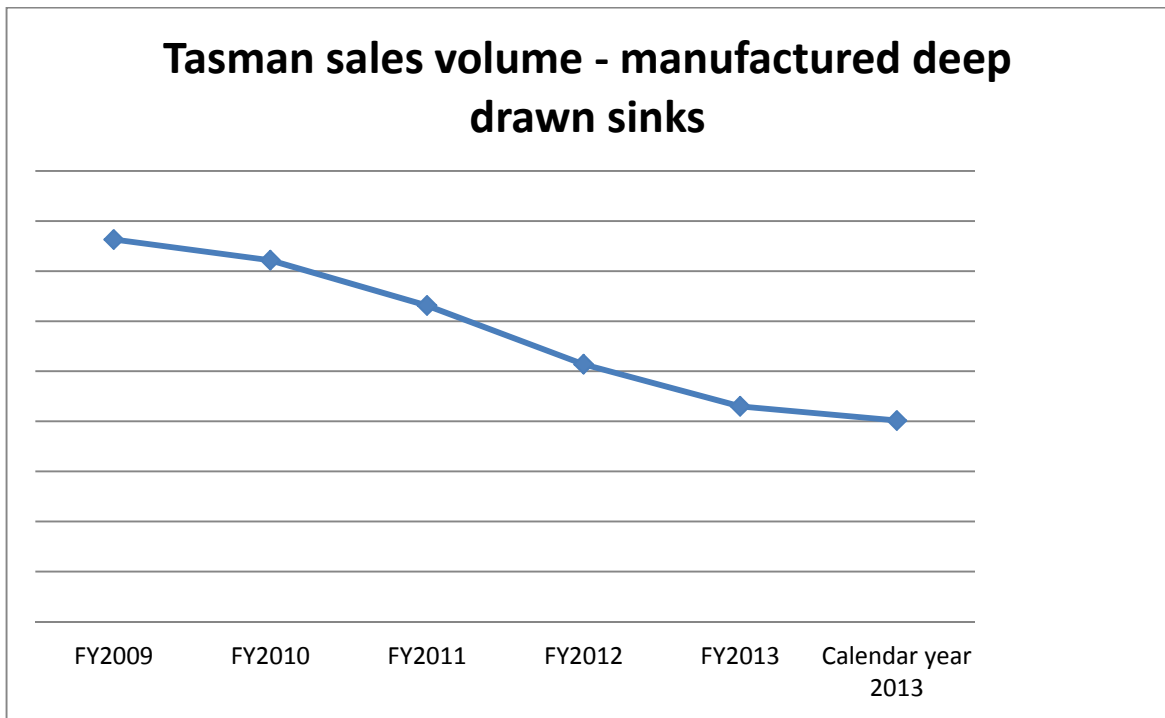


Figure 1 – Tasman’s manufactured deep drawn stainless steel sinks domestic sales volume

Figure 2 below shows Tasman’s sales volume by product (bowl number) over the same period.

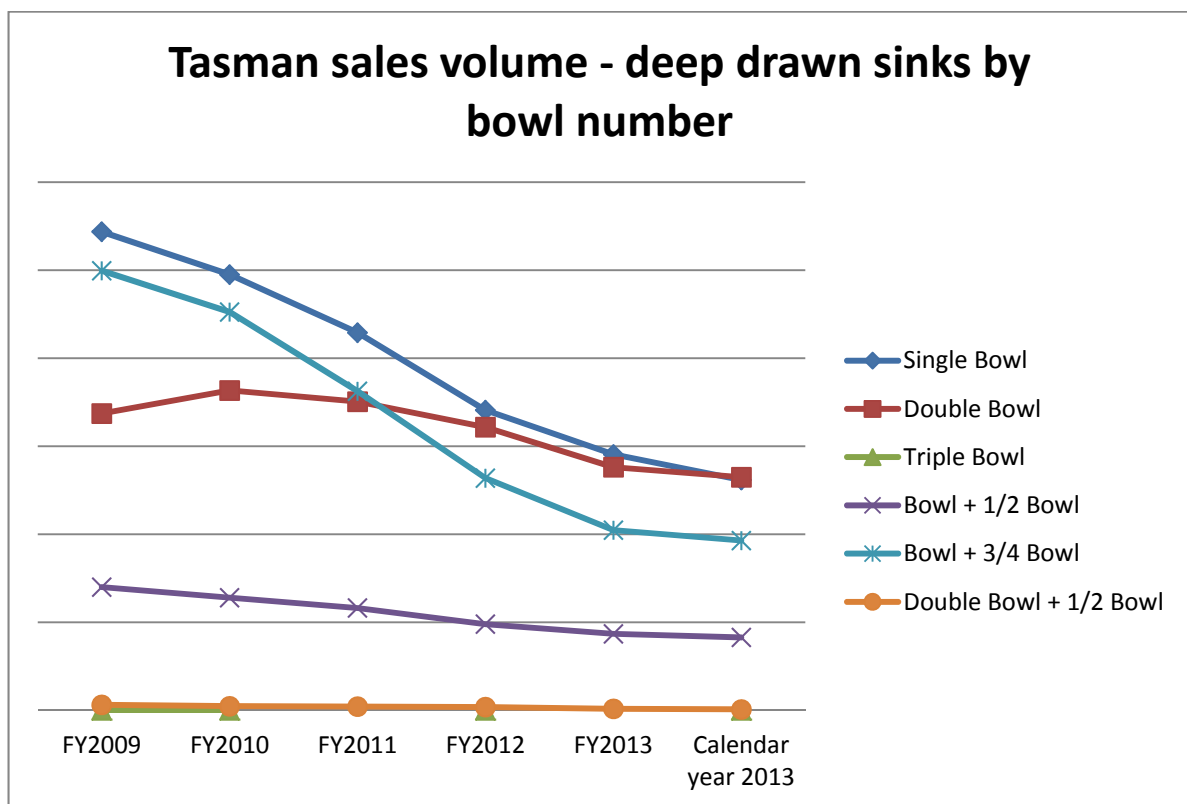


Figure 2 – Tasman’s manufactured deep drawn stainless steel sinks domestic sales volume (bowl number)

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Figure 1 indicates that Tasman's overall domestic sales volume has steadily decreased year-on-year since FY2009.

Figure 2 shows a similar trend in relation to volume by bowl number as that seen for volume on aggregate in Figure 1, except for double bowl sinks, which saw an increase in sales volume from FY2009 – FY2010, before declining year-on-year after FY2010.

To further demonstrate the trends seen in Figure 2, Table 8 below depicts an index of changes in Tasman's sales volume by product (bowl number) on the Australian market from FY2009 – calendar year 2013.

	FY2009	FY2010	FY2011	FY2012	FY2013	Calendar year 2013
Single Bowl	100%	91%	79%	63%	53%	48%
Double Bowl	100%	108%	104%	95%	82%	79%
Triple Bowl	100%	33%	0%	33%	0%	0%
Bowl + 1/2 Bowl	100%	91%	83%	70%	62%	59%
Bowl + 3/4 Bowl	100%	91%	73%	53%	41%	39%
Double Bowl + 1/2 Bowl	100%	76%	68%	59%	26%	16%
TOTAL	100%	95%	83%	67%	56%	53%

Table 8 – Index of changes in applicant's manufactured deep drawn stainless steel sinks domestic sales volume (by bowl number)

8.6.2 Market share

As discussed in Section 5.1, the Commission considers that it is unable to accurately assess market size of the Australian deep drawn stainless steel sinks industry for the purposes of this investigation. The Commission is therefore unable to make accurate observations as to market share over the injury analysis period in this SEF.

8.6.3 Conclusion – volume effects

Based on this analysis, there appears to be sufficient grounds to support the claim that the Australian industry has lost sales volume during the period calendar year 2009 to calendar year 2013.

8.7 Price trends

In its application, Tasman claimed that the Australian industry has suffered material injury in the form of price depression and suppression.

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between revenues and costs.

8.7.1 Price depression

At A-8.2 of its application, Tasman submitted an index of unit price variations by sink type (number of bowls) which Tasman purports provides evidence of price depression in relation to certain products. This index showed numerous price fluctuations over the period FY2009 to FY2013, with four types of deep drawn stainless steel sink ending the examined period at a unit price lower than that of FY2009, one type of sink above the FY2009 unit price and all sinks in aggregate ending slightly above the FY2009 price.

As discussed in Section 5.3 of the Australian Industry Visit Report, the verification team considered that the price of Tasman's product offering of deep drawn stainless steel sinks is impacted by more than bowl number, with price differentiations due to product tier, range and number of drainer boards also observed. This has been confirmed by the Commission in its investigations with importers and exporters, who have submitted that pricing analysis of deep drawn stainless steel sinks should reasonably take into account numerous factors other than bowl number.

Consequently, the Commission considers that an accurate assessment of price depression should take into account, as far as possible, numerous factors that influence price.

As discussed in Section 8.3, the aggregate sales data that has been provided to the investigation by Tasman for FY2009 to calendar year 2013 is split only by bowl number and does not allow further differentiation by models (which itself separates products into tiers) or other product characteristics. The Commission therefore considers this data to be of limited use to accurately assessing price depression over this period.

Despite the above-mentioned limitations of Tasman's aggregate sales data from FY2009 – calendar year 2013, it is observed that Tasman's Appendix A4 line-by-line sales data for July 2012 – December 2013 does include information as to product code (which takes into account product range and drainer board number).

Consequently, the Commission has undertaken analysis of Tasman's Appendix A4 to observe net unit pricing trends during the period July 2012 to December 2013 for 15 of Tasman's largest selling models, as outlined below.

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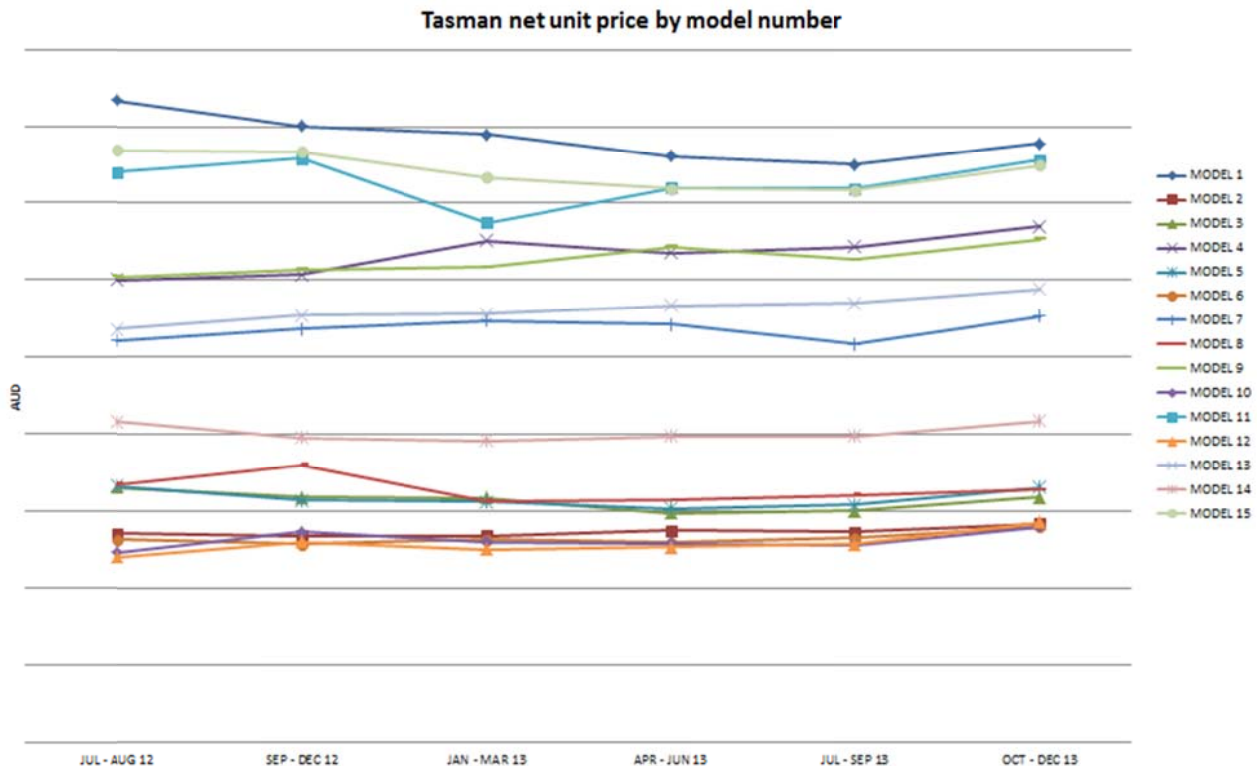


Figure 3 – Tasman’s unit price by model number – top 15 selling models of manufactured deep drawn sinks

Figure 3 shows that, during the period July 2012 to December 2013, Tasman experienced price depression across some of its highest volume selling manufactured models of deep drawn stainless steel sinks. However, Tasman experienced price increases in several models over the same period, as well as relatively stable pricing across other models.

During the verification Tasman explained that it had implemented a list price increase in September 2013. The Commission observes that Figure 9 demonstrates this price increase, with the majority of Tasman’s top 15 models by volume increasing in unit net sales price from the July to September 2013 quarter to the October – December 2013 quarter.

8.7.2 Conclusion – price effects

Based on the analysis outlined in Figure 3 above, there appears to be sufficient grounds to support the claim that the Australian industry has suffered price depression during the period calendar year 2009 to calendar year 2013.

8.8 Profit trends

To assess the economic condition of an Australian industry member’s profit and profitability in relation to like goods, the Commission will undertake a comparison between prices and costs of like goods.

As noted in Section 8.3, the Commission considers that Tasman’s CTMS is not suitable for use in assessing Tasman’s economic performance in relation to its manufactured deep drawn stainless steel sinks as a separate product. In light of this, the Commission preliminarily

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considers that both profit and profitability analysis for manufactured deep drawn stainless steel sinks cannot be undertaken in this SEF report.

However, it is considered possible to assess Tasman's profit and profitability at a company level, as detailed in the below chart, using verified company-level costs and revenue data for the period FY2009 – calendar year 2013 (noting the overlap between FY2013 and calendar year 2013).

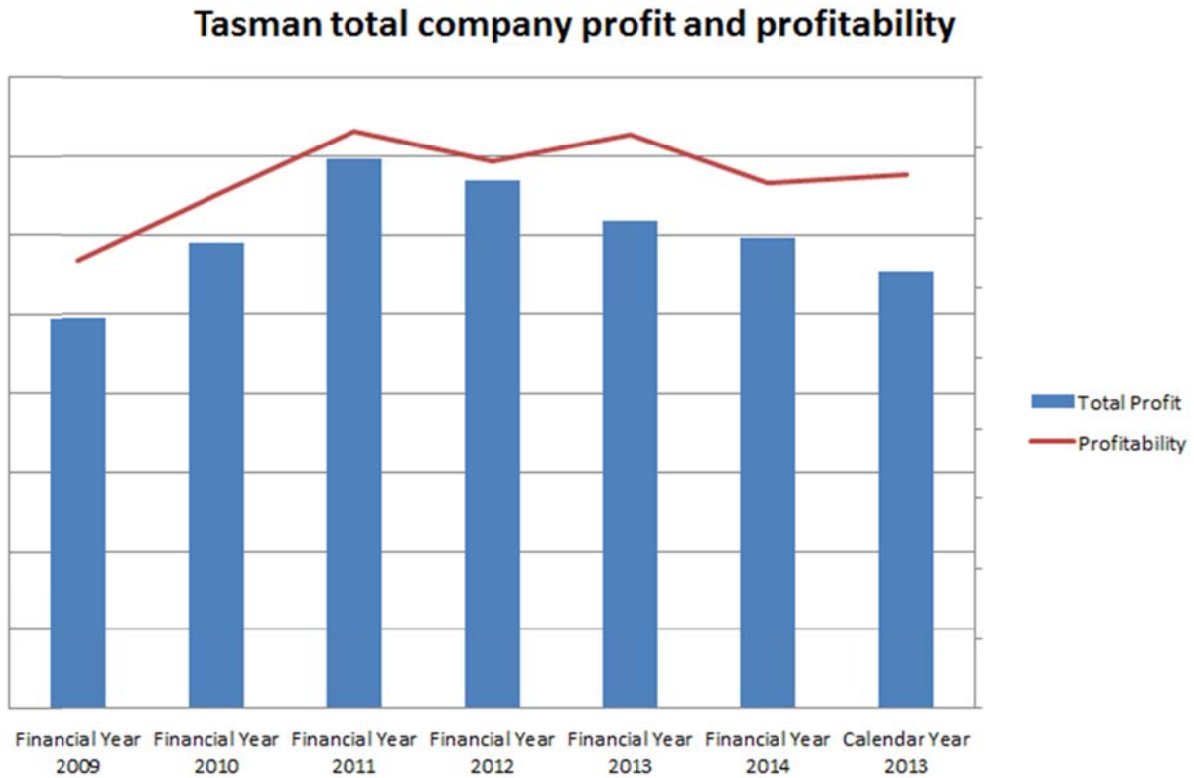


Figure 4 – Tasman's unit price by model number – top 20 selling models

Tasman's sales of manufactured deep drawn stainless steel sinks accounted for the majority of the company's total revenue during the above-charted periods and thus the profit and profitability of manufactured deep drawn stainless steel sinks is likely to have a significant impact on the overall profit and profitability of the business.

Figure 4 shows an overall improvement in the profit and profitability of the whole of Tasman's operations from FY2009 to calendar year 2013. However, both profit and profitability levels peaked in FY2011, and have experienced an overall decrease since that period, with total profit declining in each period from FY2011 onwards and profitability fluctuating during this period, but ending at levels lower than the FY2011 peak.

8.8.1 Conclusion – profit and profitability

Based on analysis of Tasman's operations as a whole, there appears to be sufficient grounds to support the claim that the Australian industry has experienced declines in profit and profitability during the period calendar year 2009 to calendar year 2013.

8.9 Other economic factors

In its application, Tasman completed Appendix A7 (other injury factors) for deep drawn stainless steel sinks for the period FY2009 – FY2013, at an aggregate (all deep drawn stainless steel sinks) level.

The data in Tasman's Appendix A7 was verified with Tasman during the verification visit, as discussed in the Australian Industry Visit Report.

The Commission observes the following trends shown in Tasman's Appendix A7 data over the period FY2009 – FY2013:

- capacity utilisation halved;
- the number of employees engaged in making deep drawn stainless steel sinks decreased;
- productivity increased;
- revenue for deep drawn stainless steel sinks decreased;
- capital investment decreased;
- the value of production assets used in the manufacture of deep drawn stainless steel sinks decreased; and
- total wages paid to employees involved in the production of deep drawn stainless steel sinks remained relatively stable, though employment numbers decreased, increasing the average wage per employee.

The data also demonstrated reduced return on investment for Tasman (as a whole company, not split into deep drawn stainless steel sinks and other production) over the period.

Based on this analysis, there appears to be sufficient grounds to support the claim that during the period calendar year 2009 to calendar year 2013 the Australian industry has experienced:

- reduced capacity utilisation;
- reduced capital investment;
- reduced value of production assets;
- reduced revenue; and
- reduced employment numbers.

9 HAVE DUMPING AND SUBSIDISATION CAUSED MATERIAL INJURY?

9.1 Preliminary assessment

Based on verified and unverified information and data available at the time of making the SEF, the Commission has made an assessment that deep drawn stainless steel sinks exported to Australia from China at dumped and subsidised prices caused material injury to the Australian industry producing like goods.

Section 269TAE of the Act outlines the factors that the Parliamentary Secretary may take into account in determining whether material injury to an Australian industry has been or is being caused or threatened. The following section of this report provides a summary of the Commission's key considerations in its causation assessment.

9.2 Size of the dumping and subsidy margins

Subsection 269TAE(1)(aa) requires the Parliamentary Secretary to have regard to the size of each of the dumping and subsidy margins, worked out in respect of goods of that kind that have been exported to Australia.

The dumping margins outlined in Chapter 6 range between 4.9 and 61.0 per cent, which are above a negligible level (two per cent). The subsidy margins that are above a negligible level, outlined in Chapter 7 range between 9.7 and 11.5 per cent. This dumping and subsidisation enabled importers of deep drawn stainless steel sinks to have a competitive advantage on price compared to the Australian industry.

In the case of concurrent dumping and subsidisation, where it is established that the exported goods are both dumped and subsidised, there is no need to quantify separately how much of the injury being suffered is the result of dumping or subsidisation. The Commission has examined whether the exports of deep drawn stainless steel sinks from China to Australia, at dumped and subsidised prices, have caused material injury to the Australian industry producing like goods.

9.3 Price effects

9.3.1 Tasman's claims

At the verification meeting, Tasman submitted that substantial price injury, in the form of price depression and suppression, has been suffered due to consistent price undercutting of its prices and downwards price pressure exerted by Chinese imported deep drawn stainless steel sinks.

Tasman explained that although there may be design, quality and warranty differences between its Australian-made deep drawn stainless steel sinks and Chinese imports, price is the main determining factor for end users when deciding which sink to purchase. Discussions with importing parties have confirmed that price is a key factor in the purchasing decisions of end users of deep drawn stainless steel sinks.

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The Commission understands that pricing is particularly important to the plumbing and housing development customers, who install sinks for their customers in projects (such as apartment blocks) and tend to be price sensitive to increase their own margins.

In its investigations with importers, the Commission has observed that price is acknowledged as a key determinant in the purchasing decision of the end users of sinks, along with other notable factors such as:

- design;
- quality (though Tasman considers that the 'lay person' making a purchasing decision at a retail outlet would not be able to discern quality differences between similar-tier sinks);
- inclusion of accessories and the quality of these;
- availability; and
- fitness for purpose (i.e. small kitchens will look for/need smaller dimension sinks than larger areas).

9.3.2 Price undercutting

For the purposes of the SEF, the Commission has undertaken analysis of price undercutting claims by Tasman. The analysis is based on verified sales data from importers visited by the Commission and Tasman and forms **Confidential Appendix 8** of this report.

The Commission compared quarterly weighted average net delivered into store prices (AUD per sink) of the imported goods sold by importers, to Tasman's net selling price (AUD per sink) delivered for each product, at a comparable level of trade. To conduct this analysis, the Commission used verified domestic sales of Tasman's manufactured goods during the investigation period and the verified sales data of three major importers, which collectively accounted for approximately one-quarter of imports of stainless steel sinks from China during the investigation period.

In doing so, the Commission took into account, as far as possible, the various product characteristics known to impact selling prices, namely:

- number of bowls (i.e. single bowl to single bowl, one-and-a-half to one-and-a-half, etc.)
- number of drainer boards (i.e. none to none, one to one, etc.);
- the inclusion of accessories or not; and
- product tier (i.e. entry level to entry level, mid-range to mid-range).

The need to conduct pricing analysis at this more detailed level is supported by the Commission's investigations with Tasman and major importers of the goods, who acknowledge that price is impacted by several product characteristics as well as market positioning (or tier).

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The Commission's analysis found that the prices of the imported goods from China undercut Tasman's domestic selling prices in all except two instances (out of 69 comparisons). The net unit sales price of Chinese imported sinks was significantly below that of Tasman's comparable product price, with an average percentage of price undercutting being 50 per cent.

The Commission is therefore satisfied that, throughout the investigation period, imports of deep drawn stainless steel sinks from China significantly undercut the sales prices of the Australian industry's own production of like goods.

9.3.3 Conclusion

As outlined in Chapter 8, the Commission has found sufficient grounds to establish that Tasman has experienced price depression (during the period July 2012 to December 2013), as well as declines in profit and profitability.

Noting the size of the above-examined price undercutting, and the reported importance of price in purchasing decisions, the Commission is satisfied, for the purposes of the SEF, that the Australian industry has been forced to reduce its selling prices in order to compete with imported goods from China to seek to maintain sales volume and market share.

Further, the Commission is satisfied that the preliminary dumping and subsidy margins ranging from 4.9 and 61.0 per cent improved the pricing position of imported deep drawn stainless steel sinks. This improved pricing position is likely to have contributed to the price undercutting examined above.

As a result, the Commission determines that a proportion of the price undercutting experienced by Tasman can be directly attributed to dumping and subsidisation.

The Commission is therefore satisfied that dumping and subsidisation caused price injury, in terms of price depression, to the Australian industry.

9.4 Volume injury

9.4.1 Tasman's claims

Tasman's claims in relation to effects on volume caused by the dumped and subsidised imports of deep drawn stainless steel sinks from China are detailed in *Consideration Report 238* and the Australian Industry Visit Report. In brief, Tasman claims that it has experienced loss of sales volume and that trend is a reflection of the increase in cheaper priced imported goods being obtained by the Australian end users of deep drawn stainless steel sinks instead of sourcing Tasman products, and displacing sales of Tasman products that the company previously achieved.

During its verification meeting, Tasman provided specific case evidence of the displacement of Australian-manufactured deep drawn stainless steel sinks to Chinese imported goods, at a range level (e.g. LakeLand range being effectively replaced by imported goods that Tasman has sourced to maintain volume) and at the specific customer level.

9.4.2 Data limitations

The Commission notes that it is not able to perform accurate analysis of the size of the Australian deep drawn stainless steel sinks market over the injury analysis period, due to the limitations of the ACBPS import and ABS data available to it (as discussed previously in this report). Consequently, the Commission is not able to accurately assess using available data whether the market for Australian deep drawn stainless steel sinks has expanded, contracted or declined over the injury analysis period to compare this with the declining sales volume trend observed in Tasman's sales volume data.

However, the Commission has examined other market size indicators for the purpose of this report (see below),

9.4.3 Market size and trends

In its discussions with major importers of deep drawn stainless steel sinks and Tasman itself, the Commission has been advised the following in relation to the period from 1 January 2009.

Market drivers and key changes

- The deep drawn stainless steel sink market in Australia is driven by the residential construction (new dwellings) and renovations sector.
- Improving occupational health and safety standards (requiring hand basins in offices and other commercial premises) has contributed to rising demand in recent years.
- Changing trends in construction have influenced the demand for sinks, with the move towards customisation of dwellings allowing for buyers of new homes and off-the-plan apartments to choose the type of sink that they want (meaning sink types sold by retailers are more varied than previously).
- There have been changes in the composition of the suppliers in the market over the last five years, with a growth in the number of importers sourcing Chinese product.
- The number of deep drawn stainless steel sinks in each new house or installed as part of renovations has increased in recent years, traditionally being limited to a kitchen and laundry sink but now including additional sinks for butler's pantries and alfresco cooking areas.
- With the increase in the interest in home cooking and kitchen renovations in recent years, there has been some shifts in consumer preferences from traditional deep drawn stainless steel sinks to 'tight corner radius' deep drawn stainless steel sinks (which Tasman does not supply – see Section III(iv) for further discussion), fabricated sinks, or other types of sinks (e.g. ceramic), as well as a trend towards undermount deep drawn stainless steel sinks.

However, tight corner radius, fabricated and ceramic sinks are in general more expensive than deep drawn stainless steel sinks, which limits their applicability to more high-end renovations and new dwellings. Traditional deep drawn stainless steel sinks

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remain prevalent in the mid and low end of the market that represents the majority of new dwelling construction.

Market size trends

- New housing builds peaked in 2010, with 2009 and 2010 being reasonably good years nationally for deep drawn stainless steel sinks.
- Some entities consider that there has been a 'drop off' in the market since 2010 (though not marked), while others have observed indications of an increase in recent years.
- Generally, there is consensus that, over the last five years, the market size has ebbed and flowed but there has been an overall lift in the market following the global financial crisis.

9.4.4 Housing statistics

In addition to the above general market information gathered from interested parties, the Commission has accessed publicly available ABS data²¹ of the number of new housing starts (building approvals) during the injury analysis period, charted in the below graph. This data forms **Non-Confidential Appendix 9**.

The Commission has been unable to access similar reliable statistics on housing renovation numbers over the injury analysis period, noting that the size of the deep drawn stainless steel sinks market is impacted by both new housing starts and existing dwelling renovations.

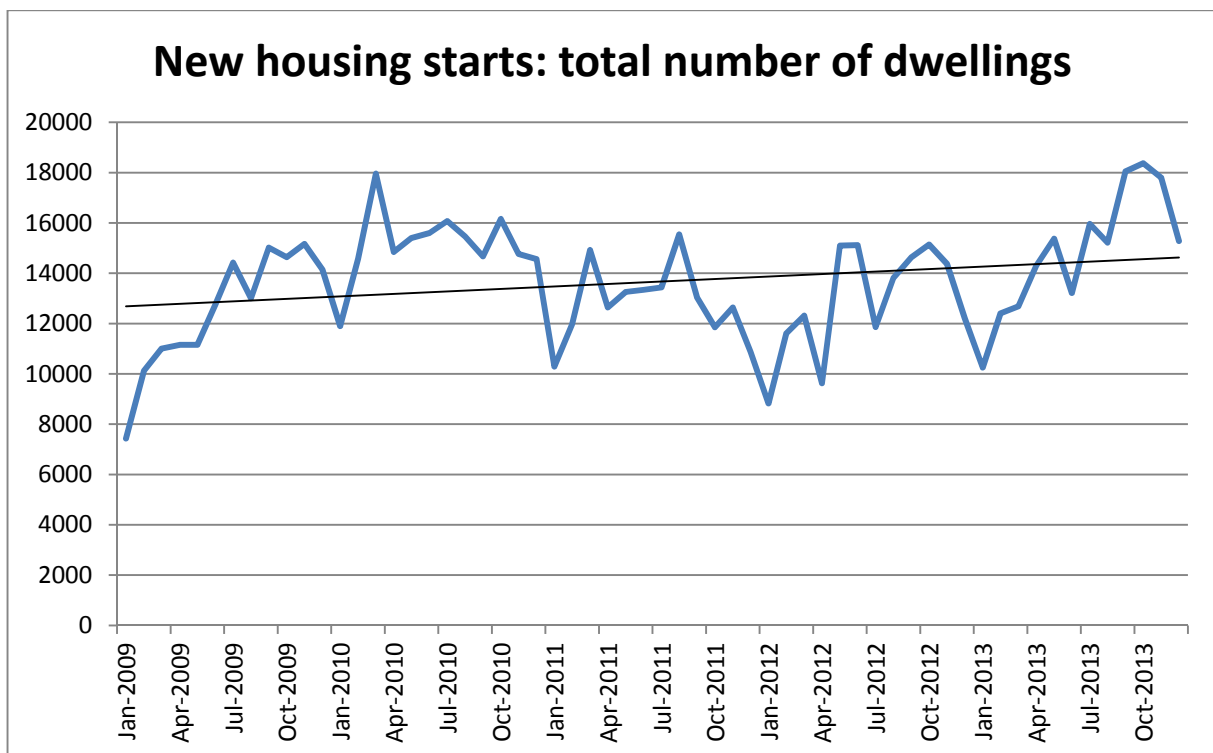


Figure 5 – ABS new housing starts, total number of dwellings, all sectors

²¹ Available at <http://www.abs.gov.au/ausstats/abs@.nsf/mf/8731.0>

Figure 5 demonstrates that, while fluctuations have existed in the number of new housing starts by month throughout the injury analysis period, the overall trend is an increase in housing starts over the period.

9.4.5 Commission's assessment

Noting in the submissions that the deep drawn stainless steel sinks market size is driven in part by the number of new housing starts, and that the number of sinks per new dwelling and renovation is increasing due to housing trends, the Commission considers the above to be evidence to support a conclusion that the overall size of the Australian deep drawn stainless steel sinks market did not experience a decline over the injury analysis period that would correspond to the year-on-year decline observed to have been experienced by Tasman (see Section 8.6).

While there may be some shift towards alternatives to traditional deep drawn stainless steel sinks (tight corner radius, fabricated or ceramic), the information available to the Commission does not suggest that this is pronounced enough to have significantly displaced the volume of deep drawn stainless steel sinks in the Australian market, noting that interested parties have explained there has been an increase in the number of deep drawn stainless steel sinks installed per dwelling, which would logically counteract some of this preference away from traditional deep drawn stainless steel sinks.

The Commission is therefore satisfied that that evidence exists to demonstrate that, during the injury analysis period:

- there was no significant decline in the size of the Australian stainless steel sinks market; and
- Tasman experienced a decline in sales volumes that was inconsistent with overall market size trends.

Noting the significant price undercutting observed in Section 9.3.2, the Commission considers it reasonable to conclude that the decline in sales volumes experienced by Tasman was due to the displacement of sales of deep drawn stainless steel sinks produced by the Australian industry to imported Chinese goods.

As discussed in Section 9.3.3, the size of the dumping margins are considered to have improved the pricing position of imported deep drawn stainless steel sinks, facilitating this price undercutting and hence the loss of sales volume observed by Tasman.

The Commission therefore concludes that dumping and subsidisation has caused volume injury, in terms of loss of sales volumes, to the Australian industry.

9.5 Injury caused by factors other than dumping and subsidisation

Under s. 269TAE(2A) of the Act, the Parliamentary Secretary must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods. Any such injury or hindrance must not be attributed to the dumping and subsidisation.

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The Commission has considered all factors outlined in s. 269TAE(2A) and provides the following summary. The Commission has also examined other potential causes of injury to Tasman other than dumped and subsidised goods from China.

9.5.1 Volume and prices of like goods that aren't dumped and subsidised – s. 269TAE(2A)(a)

In its application, Tasman identified China as a major source of supply of imported deep drawn stainless steel sinks. The Commission's assessment of ACBPS import data (noting this also includes irrelevant imports of fabricated sinks) as well as discussions with importers has shown that Thailand is likely to be another significant source of import supply.

ABS data submitted by Tasman in Appendix A2 of its application, and data obtained from the ACBPS database indicates that the percentage of total imports by country under the relevant tariff classification for deep drawn stainless steel sinks (but also including fabricated sinks) was as follows over the period FY 2009 to calendar year 2013.

	FY2009	FY2010	FY2011	FY2012	FY2013	Calendar year 2013
China	66%	72%	75%	82%	80%	81%
Thailand	18%	18%	19%	11%	12%	11%
Other imports	15%	10%	6%	8%	8%	8%

Table 9 – percentage of total import volume by country

This analysis forms **Confidential Appendix 10**.

Noting that even though the data used includes significant volumes of fabricated sinks, the Commission observes that the volume of imports of deep drawn stainless steel sinks from China is significantly exceed the volume of imports from Thailand or any other source and hence Chinese deep drawn stainless steel sinks are the dominant source of supply in the Australian market.

The Commission considers that, due to the inclusion of irrelevant data in the above ABS and ACBPS data, as well as the fact that when comparing the prices of deep drawn stainless steel sinks a number of characteristics must be taken into account that cannot be discerned from this data, there is limited use in adopting this import data to determine possible export prices of deep drawn stainless steel sinks from Thailand to compare with Australian industry or Chinese prices. This exercise has therefore not been undertaken for the purposes of this report.

The quantum of dumping of Chinese deep drawn stainless steel sinks assessed in this report is not insignificant and the Chinese goods are likely to be the dominant source of import supply to the Australian market. The Commission determines that there is sufficient evidence to suggest that, even if Thai imports of deep drawn stainless steel sinks significantly undercut Tasman's prices, material injury is likely to have been caused by the dumping and subsidisation of Chinese goods in and of themselves regardless of the presence of Thai imports.

9.5.2 Contractions in demand or changes in patterns of consumption – Section 269TAE(2A)(c)

Tasman commented on possible contractions in market size during the period FY2009 to FY2013 in its application, noting that while market contractions had been observed along with a more recent recovery, it did not experience a recovery in its own sales volume in line with market size expansion. The Commission notes that these observations by Tasman were based on its own sales data and ABS imports data. As observed previously, the ABS import data is considered unreliable for the purposes of assessing market size, and hence considers Tasman's observations based on this data to be of limited utility.

As discussed in Section 9.4.5, the Commission does not consider that there has been any significant drop in the size of the Australian deep drawn stainless steel market during the injury analysis period. While some changes in consumer preference towards alternative sinks to those produced by the Australian industry are noted (including towards tight corner radius sinks), the increased number of new dwelling starts and the reported increase in the number of deep drawn stainless steel sinks installed in dwellings would likely counteract this change of preference to some extent.

It is therefore considered that contractions in demand or changes in patterns of consumption are not likely to have significantly contributed to the injury experienced by Tasman during the examined period.

9.5.3 Developments in technology - Section 269TAE(2A)(c)

The Commission has received representations from interested parties that Tasman has not kept abreast of certain technological innovations in the manufacture of deep drawn stainless steel sinks and that this may be contributing to the company's injury. Specifically, these relate to:

- employing robotics in the manufacturing process to reduced production costs; and
- adopting new two-step deep drawing technology (including an annealing process) to manufacture deep drawn stainless steel sinks with a tighter corner radius than traditional deep drawn stainless steel sinks.

In relation to the adoption of robotics, the Commission has observed the manufacturing process at Tasman's Regency Park premises. The Commission is satisfied that Tasman is employing a high degree of robotic technology in its manufacturing process and hence failure to adopt this technology is not considered to be at issue in this case.

In relation to the technology used to draw tight corner radius deep drawn stainless steel sinks, the Commission is aware that Tasman does not currently use this process or supply these types of products, while certain imported goods from China have been manufactured in this way (see the submission lodged by Abey, dated 30 April 2014).

As discussed in Section III(iv), the Commission has received submissions that these tight corner radius sinks are a growing consumer preference because they look similar to fabricated sinks but are lower in cost and hence price. They are likely to be higher in cost and price than traditional deep drawn stainless steel sinks.

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It is observed that none of the three major importers that provided data to the Commission and were visited imported these tight corner radius sinks, indicating that these goods are not yet dominant in the market.

Based on the quantum of dumping determined in this report and the marked decrease in Tasman's sales volume over the injury analysis period, the Commission considers that there is sufficient evidence to find that dumping and subsidisation in and of itself has caused material injury to Tasman.

9.5.4 Other matters

Australian dollar

In its submission of 22 May 2014, Shiro Australia Pty Ltd (Shiro) highlights that it considers that shifts in exchange rates (presumably RMB:AUD) has had a greater impact in the Australian deep drawn stainless steel sinks market than 'any other factor'.

In its application, Tasman observed that a strong Australian dollar during the injury analysis period made it more attractive for importers of deep drawn stainless steel sinks to seek supply from overseas, consequently increasing competition for sales. Tasman noted that it had not observed an increase in imports from any country other than China and questioned the significance of the Australian dollar as a result.

In a submission dated 22 September 2014, Tasman further highlights that, throughout the injury analysis period, it experienced declines in volume and market share to Chinese imports notwithstanding movements in exchange rates, as have imports from other countries.

The Commission recognises that the strong Australian dollar will have impacted on the prices of imports, making them more price-competitive. However, in the context of deep drawn stainless steel sinks being exported to Australia from China at dumped prices, the strong Australian dollar has served to amplify the increased affordability arising from the dumped export prices.

Failure to keep up with design trends

Certain interested parties have explained that a factor contributing to the decline in Tasman's prominence in the Australian deep drawn stainless steel sinks market is the company's failure to keep up with design trends. They claim that Tasman continues to sell less-modern design sinks while imported sinks have updated their designs on a regular basis.

The Commission acknowledges that design will have an impact on the end user's decision as to which sink they will purchase. However, it is difficult to assess whether the designs currently offered by Tasman are so out-dated that this would be a significant cause of Tasman's injury such that material injury can no longer be attributed to the dumping of Chinese goods.

The Commission has preliminarily assessed that, although commercial differences exist, Tasman's traditional deep drawn stainless steel sinks are still directly competitive with tight corner radius sinks (see Section III(iv)).

Further, the Commission has evidence that shows:

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- sinks that appear to be very physically similar in design to some of Tasman's current range of sinks have been imported from China during the injury analysis period (refer to Section 10.2 of the Australian Industry Visit Report); and
- while design is an important factor, purchase price has consistently been explained to be a key purchasing decision for end users and this purchase price has determined to have been influenced by the quantum of dumping.

The Commission therefore considers that claims of materially injury by Tasman being attributed to out-dated product design cannot reasonably be said to have impacted the company's performance to such an extent that material injury can no longer be attributed to the dumping of Chinese goods.

Insufficient production capacity of the Australian industry

In a submission dated 22 May 2014, Shriro submitted that 'factors quite separate to price setting factors in China have contributed to the decline of production in Australia'.

Shriro goes on to state that there has been insufficient production capacity in Australia to serve the needs of the Australian market for 'decades', and appears to assert that this has contributed to the Australian industry's injury. Shriro goes on to highlight that it understands that the Australian industry has itself 'shifted capacity' into Thai and Chinese markets.

While Shriro's submission does not specifically state the linkage between the Australian industry's capacity and the reasons why this has contributed to Tasman's injury, the Commission considers that Shriro may intend to assert that the inability to meet market demand has forced Australian suppliers of deep drawn stainless steel sinks to meet their volume needs offshore.

Firstly, the Commission notes that there is no requirement for Australian industry to have the capacity to meet the entire Australian market for their manufactured products in order to be able to seek relief from dumping and/or subsidisation under the Act.

Available evidence (including that submitted by Tasman in its application and verified by Tasman during the Commission's verification visit to that company) indicates that the size of the Australian market is significantly larger than the full production capacity of Tasman throughout the injury analysis period. However, as outlined in Section 8.6, Tasman has experienced a decline in sales (and hence production) volumes throughout the injury analysis period, and the company has thus been operating at its full production capacity throughout that period (verified in the Australian Industry Visit Report). Available evidence indicates that this decline in volumes has been displaced by Chinese imports of the goods.

This analysis indicates that, even though the Australian industry does not have the full capacity to meet the needs of the Australian market, the capacity it does have is being under-utilised as a result of a shift in volumes towards Chinese imports. As outlined in this report, these Chinese imports have been shown to have been at dumped and subsidised prices, giving these products a price advantage over the products produced by the Australian industry that is considered to have contributed to the material injury suffered by the Australian industry.

10 WILL DUMPING AND SUBSIDY AND MATERIAL INJURY CONTINUE?

10.1 Preliminary findings

The Commission finds that exports of deep drawn stainless steel sinks from China in the future may be at dumped and subsidised prices²² and that continued dumping and subsidisation may cause further material injury to the Australian industry.

10.2 Introduction

When the Parliamentary Secretary is satisfied that material injury to an Australian industry has been caused by dumping and subsidisation, anti-dumping measures and countervailing measures may be imposed on future exports of like goods if the Parliamentary Secretary is satisfied that the dumping and subsidisation and material injury may continue.

10.3 Commission's assessment

10.3.1 Will dumping continue?

The Commission's dumping analysis shows that deep drawn stainless steel sinks exported to Australia from China during the investigation period were at dumped prices, with dumping margins ranging from 4.9 and 61.0 per cent.

The Commission notes that forward orders exist for exports from China, and that these exports have a significant share and influence in the Australian market. The Commission also notes that, even at its full capacity, the Australian industry is not able to fully supply the entire volume of the Australian deep drawn stainless steel sinks market, and hence importations of the goods from China are likely to continue.

Considering the above factors existing in the Australian deep drawn stainless steel sinks market and the established routes to market, the Commission considers that dumping will continue if anti-dumping measures are not imposed.

10.3.2 Will subsidisation continue?

The Commission found that deep drawn stainless steel sinks exported to Australia from China during the investigation period were subsidised, with subsidy margins ranging from negligible to 11.4%.

The Commission considers that no evidence exists to show that countervailable subsidisation of Chinese products will be ceased in its entirety in the future and it is therefore considered that deep drawn stainless steel sinks exporters will likely continue to receive financial contributions under at least some of the identified countervailable subsidy programs. In particular, it is considered the existence and accessing of Program 1 (raw materials at less than adequate remuneration) will continue in future and is thus likely to benefit deep drawn

²² Excluding deep drawn stainless steel sinks exported by Jiabaolu and Primy, which the commission finds have not been in receipt of countervailable subsidisation.

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stainless steel sinks exporters. This program is the program under which the majority of benefit to deep drawn stainless steel sinks exporters has been observed during the investigation period.

It is therefore considered that subsidisation will continue in the future.

10.3.3 Will material injury continue?

The Commission has reviewed the Australian industry's performance over the injury analysis period and has made a finding that deep drawn stainless steel sinks exported at dumped and subsidised prices have caused material injury to the Australian industry.

The Commission considers that a continuation of price competition from dumped and subsidised imports from China is likely to have a continuing adverse impact on the Australian industry. The Commission considers that this impact may be particularly evident in price undercutting and reduced profits and profitability.

Based on the available evidence, the Commission finds that exports of deep drawn stainless steel sinks from China in the future may be at dumped or subsidised prices and that continued dumping or subsidisation may cause further material injury to the Australian industry.

11 NON-INJURIOUS PRICE

11.1 Preliminary assessment

Noting the operation of s.8(5BAA)(a) of the Dumping Duty Act and the Commission's findings that the goods have been in receipt of non-notified countervailable subsidies, the Commission recommends that regard should not be had to the desirability of fixing a lesser rate of duty and the full preliminarily assessed dumping and subsidy margins be applied to any interim dumping duty and interim countervailing duty taken in relation to deep drawn stainless steel sinks that the Commission proposes in this report to recommend to the Parliamentary Secretary.

11.2 Relevant legislation

Duties may be applied where it is established that dumped imports have caused or threatened to cause material injury to the Australian industry producing like goods. The level of dumping duty imposed by the Parliamentary Secretary cannot exceed the margin of dumping, but the Parliamentary Secretary must have regard to the desirability of fixing a lesser amount of duty if it is sufficient to remove the injury.²³

However, pursuant to Section 8(5BAA)(a) of the Dumping Duty Act, the Parliamentary Secretary is not required to have regard to the desirability of fixing a lesser amount of duty in certain circumstances. One such circumstance is where, in case where countervailable subsidies have been received in respect of the goods) the country in relation to which the subsidy has been provided has not complied with Article 25 of the *SCM Agreement* for the compliance period.

Article 25 of the *SCM Agreement* requires that WTO members are to notify the WTO of any specific subsidies (as defined in Articles 1 and 2) that are granted or maintained within their territories

Section 8(5BAA)(a) of the Dumping Duty Act does not limit the Parliamentary Secretary from having regard to fixing a lesser level of duty if considered reasonable in the circumstances.

11.3 Commission's assessment

At the time of publishing this SEF, the Commission has not received any submissions from interested parties that address either the desirability of the Parliamentary Secretary fixing a lesser amount of duty, or, if such an approach was to be taken, how this lesser amount of duty should be determined.

As outlined in Chapter 7 and Non-confidential Appendix 5, the Commission has found that the goods have been in receipt of non-notified countervailable subsidies.

In light of the above, the Commission 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 proposes to recommend to the

²³ SECTION 269TG(5)

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Parliamentary Secretary in the final report for this investigation (see Chapter 12).

12 PROPOSED MEASURES

12.1 Preliminary finding

The Commission proposes to recommend to the Parliamentary Secretary that a dumping duty notice be published in respect of deep drawn stainless steel sinks exported to Australia by all exporters from China. It also proposes to recommend that a countervailing duty notice be published in respect of deep drawn stainless steel sinks exported to Australia by all exporters from China, except for Jiabaolu and Primy.

The Commission proposes to recommend that the interim dumping duty and interim countervailing duty imposed as a result of these notices be the:

- the ad valorem rate of countervailable subsidisation; plus
- the ad valorem rate of dumping, minus an amount for the subsidy rate applying to subsidy Program 1 (where this has been received by the exporter or group of exporters).

This ad valorem rate is to be calculated as a percentage of the export price.

12.2 Proposed measures

12.2.1 Form of measures

The forms of duty available when implementing measures are prescribed in the *Customs Tariff (Anti-Dumping) Regulation 2013* and include:

- combination of fixed and variable duty method (combination method);
- floor price duty method;
- fixed duty method (\$X per tonne); or
- ad valorem duty method (i.e. a percentage of the export price).

The Commission recommends that interim dumping duty and interim countervailing duty be calculated ad valorem (i.e. a proportion of export price). The ad valorem method is suitable for goods with many different product levels of varying unit prices.

12.2.2 Combined measures

Noting the above recommendation that the lesser duty rule not be applied (see Chapter 11), the Commission proposes to recommend that the level of interim countervailing duties proposed for deep drawn stainless steel sinks exported from China be the full margin of countervailable subsidisation in the case of all exporters, excluding Jiabaolu and Primy.

In relation to interim dumping duties, the Commission notes that in the case of deep drawn stainless steel sinks, the calculation of combined dumping and countervailing duties is not simply a matter of adding the reported dumping and subsidy margins together for any given exporter, or group of exporters. This is due to the fact that the Commission has recommended that:

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- the normal value of all deep drawn stainless steel sinks exported to Australia from China be constructed under Section 269TAC(2)(c) and that, as part of this construction, an uplift for stainless steel costs incurred by Chinese exporters of those goods should be applied to ensure that these costs are reasonably representative of competitive markets costs (refer to Chapter 6); and
- Program 1 - Raw Materials Provided by the Government at Less than Fair Market Value, is a countervailable subsidy received by certain exporters, the benefit for which has been determined by establishing the difference between stainless steel costs incurred by Chinese exporters of the goods when purchasing those goods from state-invested enterprises (SIEs) and the same reasonably competitive market benchmark used in determining costs for constructed normal values (see Chapter 7).

Consequently, the Commission proposes to recommend that the collective interim dumping duty and interim countervailing duty imposed in relation to deep drawn stainless steel sinks from China to be the sum of:

- the subsidy rate calculated for all countervailable programs; and
- the dumping rates calculated, less an amount for the subsidy rate applying to Program 1 (where this has been received by the exporter or group of exporters).

This approach avoids any overlap or double-counting that may arise from the circumstances of this case where there are domestic subsidies and a constructed normal value that includes a major cost component that is based on surrogate data.

12.3 Request for price undertaking

In its submission dated 18 August 2014, Komodo lodged a request that, if the Commission determines that it should recommend that the Parliamentary Secretary impose anti-dumping measures following the investigation, the Commission further recommend that the Parliamentary Secretary accept a price undertaking from Komodo, Xintian and the affiliated Guangzhou Komodo Kitchen Technology Co. Ltd.

The Commission's preliminary view is to recommend the Parliamentary Secretary does not accept a price undertaking offer for the following reasons:

- it is possible that a price undertaking based on data particular to the investigation period (1 January 2013 to 31 December 2013), could be so dated as to render the undertaking an inadequate remedy for injurious dumping and subsidisation;
- in terms of dumping, the prices of stainless steel, the primary raw material for manufacturing deep drawn stainless steel sinks, are cyclical. This suggests that present and future constructed normal values for deep drawn stainless steel sinks in China may be substantially different to those calculated for the purposes of the dumping margin calculations in the investigation period. Future stainless steel price movements cannot be reasonably anticipated;
- in terms of countervailable subsidisation, almost all of the subsidy margin calculation applicable to residual exporters was in relation to "*Program 1 – stainless steel provided at less than adequate remuneration*". The calculation of the amount of subsidy for this program is dependent in major part on the proportion of stainless steel raw materials

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that exporters purchased from public bodies in the investigation period. There is no reasonable means for anticipating such proportions presently, or into the future;

- the calculation of the amount of subsidy for Program 1 is also dependent on the difference between the actual prices paid for stainless steel by Chinese exporters of deep drawn stainless steel sinks and the benchmark stainless steel price used by the Commission as a measure of adequate remuneration. The difference observed during the investigation period is not necessarily a reasonable measure of such differences presently, or into the future;
- a price undertaking based on a minimum price level is out of step with the form of dumping and countervailing measures that the Commission is proposing to recommend. That is, the duty rates are measured as a percentage of export prices. Rates of duty based on percentages of export prices are a deliberate recommendation by the Commission in order to establish interim duties that reasonably reflect movements in key variables such as the price of stainless steel over time; and
- where the exporting and importing parties are related the risk of circumventing the terms of any undertaking are increased.

For the reasons outlined above, contemporaneous and future measures of dumping margins and countervailable subsidy margins specific to Komodo cannot be reasonably measured or estimated. In these circumstances, the Commission is not satisfied that any price undertaking offered that is based on variable factors for the investigation period will provide for future trade in like goods so as to avoid causing or threatening material injury to the Australian deep drawn stainless steel sinks industry.

12.4 Imposition of dumping duties retrospectively

Dumping duties can be imposed retrospectively on goods which entered home consumption between the day of initiation of an investigation to the day securities could be taken (approximately 60 days after initiation) or were taken (up to a limit of 90 days).

In considering whether a retrospective notice should be published in relation to dumping duties, the Commissioner has had to regard to whether:

- the importer knew, or ought to have known, that the goods would be considered to be dumped goods, causing material injury to Australian industry (s. 269TN(4)(a)); OR
- the goods are of a kind which on a number of occasions has caused material injury to Australian industry, or would have caused material injury but for the publication of a notice under s. 269TG or 269TJ (i.e. the goods are of a kind which have previously been found to be dumped in Australia) (s. 269TN(4)(b));

AND

- the goods entered home consumption up to 90 days before securities were taken (or the Commissioner had a right to take securities) (s. 269TN(3)(a)); and

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- material injury, arising from dumping, has been caused to Australian industry by the importation during a short period of large quantities of goods of the same kind (s. 269TN(3)(b)); and
- publication of a retrospective notice is necessary to prevent the serious undermining of the remedial effect of the dumping duty that will become payable upon publication of the notice (s. 269TN(3)(b)).

The Commission has determined that it will not recommend the Parliamentary Secretary impose retrospective dumping duties on the importation of deep drawn stainless steel sinks from China.

In coming to this preliminary decision, the Commission had regard to various matters discussed below.

- The reliability of ACBPS importation data: the Commission determined that ACBPS import data was not sufficiently reliable to determine whether there has been a large increase in importations of deep drawn stainless steel sinks from China following the commencement of this investigation which had the potential to cause injury to the Australian industry. The Commission identified that inaccuracies in data (such as inaccurate data regarding volume and weight of imports), combined with the inclusion of data relating to fabricated sinks and other items that are not the goods, made it impossible to identify any abnormalities pertaining to import patterns for deep drawn stainless steel sinks from China and associated market impacts.
- Other evidence to demonstrate a need for retrospective duties: The Commission did not receive or observe any evidence to show that Chinese exporters of the goods had increased importations of deep drawn stainless steel sinks from China in large volumes following the commencement of this investigation.

12.5 Imposition of countervailing duties retrospectively

Countervailing duties can be imposed retrospectively on goods which entered home consumption between the day of initiation of an investigation to the day securities could be taken (approximately 60 days after initiation) or were taken (up to a limit of 90 days).

In considering whether a retrospective notice should be published in relation to countervailing duties, the Commissioner has had to regard to whether:

- the goods entered home consumption up to 90 days before securities were taken (or the Commissioner had a right to take securities) (s. 269TN(5)(a)); and
- material injury which is difficult to repair, arising from countervailable subsidies, has been caused to Australian industry by the importation during a short period of large quantities of goods of the same kind (s. 269TN(5)(b)); and
- publication of a retrospective notice is necessary to prevent the recurrence of the injury (s. 269TN(5)(b)).

The Commission has determined that it will not recommend the Parliamentary Secretary impose retrospective subsidy duties on the importation of deep drawn stainless steel sinks from China. The Commission has arrived at this determination for the same reasons outlined in Section 12.4 in relation to the imposition of retrospective dumping duties.

13 REVISION OF SECURITIES

As outlined in Section 2.2, the Commissioner made a PAD on 13 August 2014 that there appeared to be reasonable grounds for the publication of a dumping duty notice, and required that provisional measures, in the form of dumping securities, be taken pursuant to s.42 of the Act on goods exported from China that were entered for home consumption into Australia on or after that date. The PAD was made (and resulting securities taken) on the basis of verified and unverified information provided by interested parties.

No PAD was made in relation to findings of countervailable subsidisation, or resulting securities collected.

Following verification visits with exporters and consideration of certain submissions made following these verification visits, the Commissioner updated the rate of dumping securities required to be collected in relation to goods imported into Australia on or after 24 October 2014.

Since making the above amendment to securities, the Commission has reviewed the findings of the Exporter Verification Reports of the selected exporters, and considered various submissions lodged by interested parties to the investigation that relate to the calculation of dumping for the selected exporters and has re-assessed the level of dumping for those selected exporters and for all other exporters based on this verified information. The resulting preliminary dumping margins are discussed in Chapter 6 of this report.

The revised preliminary dumping margins outlined in Chapter 6 of this report in relation to some exporters vary significantly from the provisional measures imposed on 24 October 2014.

In addition, since making the above PAD, the Commission has preliminarily assessed that the goods exported from China have been in receipt of countervailable subsidies, and that this countervailable subsidisation has caused material injury to the Australian industry, as detailed in Chapters 7 and 9 of this report.

Due to these significant changes, the Commission has considered the desirability of:

- amending the current rate of dumping securities to more accurately reflect the re-assessed levels of dumping; and
- issuing a PAD, and requiring and taking securities, in respect of any countervailing duties under Section 42 of that Act that may become payable in relation to goods exported to Australia from China.

After considering the above, the Commission has determined that it is necessary to amend the current rate of dumping securities to reflect the preliminary dumping margins outlined in this report.

However, the Commission has determined that it is not necessary to make a PAD and require and take countervailing securities at this stage, despite the findings of this SEF that exports of the goods have been in receipt of subsidies and that this has caused material injury to the Australian industry. If a countervailing PAD were made, the combined dumping and countervailing securities would need to take into account the removal of the double-count of subsidy Program 1, which constitutes a significant proportion of the rate of the countervailing

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margins (see Section 12.2.2). Therefore the impact on the overall rate of securities if countervailing securities were included is minimal.

The Commission will amend the dumping securities so that they apply to the goods imported on or after 23 December 2014. Table 10 below sets out the rates of securities imposed on 24 October 2014 and the revised rates that will apply from 23 December 2014.

Exporter / Manufacturer	Securities as amended on 24 October 2014	Securities as amended on 23 December 2014
Zhuhai Grand Kitchenware Co., Ltd	33.5%	21.1%
Primy Corporation Limited	4.9%	15.0%
Zhongshan Jiabaolu Kitchen & Bathroom Products Co., Ltd	22.5%	22.5%
Jiangmen New Star Hi-Tech Enterprise Ltd.	18.3%	19.1%
Elkay (China) Kitchen Solutions Co., Ltd.	18.3%	19.1%
Franke (China) Kitchen System Co., Ltd	18.3%	19.1%
Xinhe Stainless Steel Products Co., Ltd	18.3%	19.1%
Zhongshan Xintian Hardware Co., Ltd.	18.3%	19.1%
Rhine Sinkwares Manufacturing Ltd. Huizhou	18.3%	19.1%
Yuyao Afa Kitchenware Co., Ltd	18.3%	19.1%
Jiangmen City HeTangHengWeiDa Kitchen & Sanitary Factory	18.3%	19.1%
Uncooperative and all other exporters	58.8%	58.8%

Table 10 – change to rates of security

14 LIST OF APPENDICES

Non-Confidential Appendix 1	Assessment of claims – goods not subject to the investigation and goods eligible for Parliamentary Secretary exemption
Confidential Appendix 2	Calculations of export prices, normal values and dumping margins
Non-Confidential Appendix 3	Assessment as to the reasonableness of stainless steel costs and a reasonably competitive market price substitute
Confidential Appendix 4	MEPS composite price calculations
Non-Confidential Appendix 5	Assessment of the countervailability of subsidy programs
Confidential Appendix 6	Calculations of countervailable subsidisation
Confidential Appendix 7	Economic condition of the industry analysis
Confidential Appendix 8	Price undercutting analysis
Non-Confidential Appendix 9	Housing starts statistical analysis
Confidential Appendix 10	Import volume analysis
Non-confidential Appendix 11	Outline of previous relevant market situation and costs reasonableness findings

NON-CONFIDENTIAL APPENDIX 1 – ASSESSMENT OF CLAIMS OF GOODS NOT SUBJECT TO THE INVESTIGATION AND GOODS ELIGIBLE FOR PARLIAMENTARY SECRETARY EXEMPTION

PART I OVERVIEW

The Commission has received submissions from various interested parties during the investigation relating to particular imported goods that it is claimed either:

- are not the goods under consideration (being not within the parameters of the goods description) and hence not subject to the investigation or any resulting anti-dumping measures; or
- should be exempted from measures should any arise from the investigation – including a formal request for a Ministerial exemption lodged by Abey.

On 20 November 2014, the Commission published *Issues Paper 2014/03*, which discussed issues relating to the goods and like goods relevant to assessing the above claims. This paper outlined the claims raised by interested parties and Tasman, indicated the Commission's position on some items, and called for additional information from interested parties in relation to others. Following release of the Issues Paper, the Commission received several more submissions addressing these goods and like goods issues.

The claims in relation to particular imported products, and the Commission's assessment in relation to each, are detailed in this appendix.

PART II APPLICABLE LEGISLATION, POLICY AND PRACTICE

II(i) GOODS CLAIMED TO NOT BE THE GOODS UNDER CONSIDERATION

If, at the end of a dumping and/or countervailing investigation, the Parliamentary Secretary makes a positive determination and issues a dumping duty notice under Section 269TG or a countervailing duty notice under Section 269TJ, the notice(s) will be issued in respect of a set range of imported products, defined by the description of the goods under consideration (the goods, which will then be defined as 'the goods subject to the measures'), as detailed in Section 3.2.

Where imported products are considered to not meet the parameters of the goods description, they are not subject to the dumping duty notice or countervailing duty notice, and hence not subject to any associated anti-dumping measures.

A determination as to whether imported products either 'fit' or 'do not fit' the requirements of the goods under consideration is one that must be made by examining the characteristics of the imported product, the parameters of the goods description and assessing whether these parameters are satisfied.

II(ii) EXEMPTION FROM MEASURES

As outlined above, in the event that measures are imposed on deep drawn stainless steel sinks exported from China, all imports that conform to the description of the goods subject to the measures will be subject to dumping and/or countervailing duties. However, there is provision for the Parliamentary Secretary to exempt particular goods that fall within the goods description in certain circumstances. Specifically, the Parliamentary Secretary has discretion to exempt goods subject to anti-dumping measures from that duty under the Dumping Duty Act.

There are numerous grounds on which exemptions may be granted from anti-dumping measures under the Dumping Duty Act. Sections 8(7) and 10(8) provide the grounds under which an exemption can be granted from dumping and countervailing duties respectively.

The exemption ground applicable to claims by interested parties in relation to this investigation is that 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 (Subsections 8(7)(a) and 10(8)(a)).

ELEMENTS OF SUBSECTION 8(7)(a) AND/OR 10(8)(a) EXEMPTIONS

In determining whether the grounds for an exemption under subsections 8(7)(a) or 10(8)(a) of the Dumping Duty Act are met, two key elements must be satisfied:

- 1) whether the Australian industry offers like or directly competitive goods to the goods being considered for exemption; and
- 2) if these are offered, whether the offer is made to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.²⁴

The specific claims raised by interested parties to this investigation have focussed on asserting that the Australian industry does not produce 'like or directly competitive' goods to certain imported products altogether. No claims have been made under element 2 above, on the basis that Tasman does offer like or directly competitive goods to those being considered for exemption.

The Commission has not observed, during its verification and other interactions with Tasman, any evidence to suggest that it is Tasman's practice to not offer its products to all customers under equal terms when regard is had to the custom and usage of trade. Tasman limits its customers to being retailers and wholesale distributors and does not sell directly to the public, and the trading terms between Tasman and its customers may vary customer by customer having regard to numerous factors. However, these practices are not considered to be beyond normal practices of a manufacturer, having regard to the custom and usage of trade.

The Commission has therefore limited its consideration of exemption claims to assessing whether the Australian industry offers 'like or directly competitive goods' and not the terms of this offer.

²⁴ Where question 1) is not satisfied, there is no need to progress to question 2) as the grounds for an exemption are already met.

THE MEANING OF ‘LIKE OR DIRECTLY COMPETITIVE GOODS’

In assessing the claims of interested parties that the Australian industry does not produce ‘like or directly competitive’ goods to certain imported products, the Commission has considered the meaning of that term, which is not expressly defined in the Dumping Duty Act.

Interested party claims

Interested parties have made submissions to the investigation as to the meaning of ‘like or directly competitive’ in the context of an exemption under subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act. These have been considered in arriving at the determinations and recommendations in this report.

In particular, Tasman has submitted that references to ‘like or directly competitive goods’ in the Dumping Duty Act should be interpreted in the same way as the term ‘like goods’ under Part XVB of the Act, noting that the intention of the exemption provisions is not to distinguish a separate class of the goods based on their properties or characteristics, but rather in terms of the condition on which they are sold in the market (i.e. under like terms and conditions).²⁵

Conversely, Komodo has submitted that the term ‘like or directly competitive’ should be construed as ‘closely like or directly competitive’ [emphasis added].²⁶

Commission’s assessment

The term “like or directly competitive goods” has been interpreted in the context of safeguards measures under Article 2 of the *World Trade Organization (WTO) Agreement on Safeguards* (Safeguards Agreement). Guidance on the WTO’s interpretation of ‘like or directly competitive goods’ in the context of safeguards may offer assistance to the interpretation of ‘like or directly competitive goods’ as it appears in subsections 8(7)(a) and (8)(a) of the Dumping Duty Act.

In an Australian context, the Australian Productivity Commission (Productivity Commission) examined the meaning of ‘like or directly competitive goods’ in the context of its 2008 *Safeguards Inquiry into the Import of Pigmeat*.

a) *Like goods*

In its *Pigmeat* inquiry, the Productivity Commission looked to the definition of ‘like goods’ provided in the context of the general procedures for safeguard inquiries issued by the Australian Government, that is:

Like product means a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.’²⁷

²⁵ Tasman, *Response of the Australian Industry to the Submission of the Importer*, 30 September 2014.

²⁶ Komodo, *Submission of Products Exemption in Response to Issues Paper 2014/03 of the Commission on Goods and Like Goods*, 27 November 2014.

²⁷ Commonwealth of Australia Special Gazette, No. S 297, 1998 cited by Productivity Commission *Safeguards Inquiry into the Import of Pigmeat*.

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This definition closely reflects the definition of “like goods” found in subsection 269T(1) of the Act which 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.

The interpretation of this definition by the Commission for the purposes of the Act is guided by established policy and practice embodied in the *Dumping and Subsidy Manual*. This observes that where two goods are identical they are automatically like goods, but where two goods are not alike in all respects, the Commission will assess whether they have characteristics closely resembling each other including assessing their physical likeness, commercial likeness, functional likeness and production likeness.

b) Directly competitive goods

The term ‘directly competitive’ has been considered separately by the Productivity Commission. Citing the WTO Appellate Body, the Productivity Commission found that ‘directly competitive has been interpreted as encompassing goods with distinct physical characteristics, provided they compete for the same market.’²⁸

In addition, the Productivity Commission had regard to relevant WTO jurisprudence, as the term “like or directly competitive goods” has been considered by the WTO Dispute Settlement Body (DSB) in a number of cases. The primary characteristics of goods to which the DSB had regard in these cases include:

- the competitive commercial relationship between goods in the marketplace;²⁹
- interchangeability and substitutability, or whether the goods provide “alternative ways of satisfying a particular need or taste”;³⁰ and
- commercial interchangeability of products.³¹

In *Korea — Alcoholic Beverages*, the prevailing view of the DSB was that:

“The term “directly competitive or substitutable” describes a particular type of relationship between two products, one imported and the other domestic. It is evident from the wording of the term that the essence of that relationship is that the products are in competition. This much is clear both from the word “competitive” which means “characterized by competition”, and from the word “substitutable” which means “able to be substituted”. The context of the competitive relationship is necessarily the marketplace.³²

²⁸ WTO, Appellate Body, *Japan – Taxes on Alcoholic Beverages* (DS 8).

²⁹ *Korea — Alcoholic Beverages* (WT/DS75/AB/R, WT/DS84/AB/R) at 114

³⁰ *ibid* at 115

³¹ *US — Cotton Yarn*, (WT/DS192/AB/R) at 96-98

³² *Korea — Alcoholic Beverages* (WT/DS75/AB/R, WT/DS84/AB/R)

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In *Japan – Taxes on Alcoholic Beverages*, the DSB expressed the view that a comparison of the ‘commercial uses of the products, not of their characteristics’,³³ is central to the determination of their competitive nature in assessing whether products are ‘directly competitive.’

Need to only satisfy one element

The exemption provisions under subsections 8(7)(a) or 10(8)(a) of the Dumping Duty Act specifically provide for exemptions where:

- like goods; or
- directly competitive goods

are not offered for sale in Australia.

The Commission therefore considers that if either of these provisions are met (i.e. there are no like goods but there are directly competitive goods and vice versa) the requirements of an exemption are not met.

In light of the above, for the purposes of assessing whether an exemption from measures under subsections 8(7)(a) or 10(8)(a) of the Dumping Duty Act should be granted, a comparison must be made between the imported and domestically produced goods to determine if the domestically produced goods are either:

- alike in all respects, or where not alike in all respects have characteristics closely resembling those of the imported goods; or
- a competitive commercial relationship exists between the goods in the marketplace having regard to the commercial uses of the products.

PART III CONSIDERATION OF CLAIMS

The below outlines the Commission’s consideration of claims raised by interested parties that certain goods should either be:

- considered to not be subject to the investigation (by virtue of not being subject to the goods description); or
- exempted from any anti-dumping measures that may result from the investigation through the granting of an exemption by the Parliamentary Secretary under sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

This includes consideration of the formal application for exemption lodged by Abey during the investigation and claims raised by interested parties in general submissions (i.e. not in formally-lodged exemption applications).

It is noted that claims for Ministerial exemption can be made any time after the imposition of anti-dumping measures (by lodging an exemption application), or during an investigation

³³ *Japan – Taxes on Alcoholic Beverages* at 6.22

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process (through formal application or general submission). Those raised during the progress of an investigation aim to request an exemption from measures should the investigation result in such measures being imposed. However, the Commission will only consider requests for an exemption lodged during an in-progress investigation where it considers there is sufficient time and resources to appropriately make the required considerations.

In the case of matters claimed in relation to deep drawn stainless steel sinks, the Commission has examined the exemption claims as part of the investigation. If a recommendation is made to the Parliamentary Secretary at the conclusion of the investigation to impose anti-dumping measures, the Commission is aiming to also recommend to the Parliamentary Secretary at the same time whether any goods should be exempt.

Although the Commission has indicated in this report whether, on the information currently before it, it is likely or unlikely to recommend to the Parliamentary Secretary that an exemption be granted (see below), the decision to grant an exemption is discretionary and lies with the Parliamentary Secretary.

In the event that the Commission has stated in this report that it is unlikely to recommend that the Parliamentary Secretary grant an exemption, or that it recommends that the Parliamentary Secretary does not grant an exemption for a particular subset of the goods, this does not prevent an interested party from submitting a later exemption request. Similarly, where the Commission has indicated in this report that, based on the information before it, it is likely to recommend to the Parliamentary Secretary that an exemption be granted, this may not be the final view of the Commission and does not constrain the Parliamentary Secretary's decision.

The findings in this section are based upon the submissions lodged to the Commission during the investigation, but also on the Commission's own research as to the characteristics and uses of these specific products.

III(i) INDIVIDUALLY-IMPORTED LIPPED LAUNDRY TUBS

SUBMISSIONS RECEIVED BY THE COMMISSION

The Commission has received various submissions relating to 'lipped' laundry tubs, which are deep drawn stainless steel laundry tubs characterised by having a 'lip' edge that allows the tub to be installed on top of a purpose-designed laundry cabinet (generally made of metal or plastic) to make a free-standing laundry unit.

In some cases, these lipped laundry tubs are imported along with the requisite laundry cabinets that they are installed atop of to become a laundry unit. In other cases, lipped laundry tubs are imported individually and not in conjunction with a laundry cabinet. In these cases, the Commission understands these tubs are later installed on laundry cabinets that are either made in Australia, or imported from a different origin country or supplier.

The Commission has received submissions in relation to lipped laundry tubs that are imported with a cabinet, as well as lipped laundry tubs imported individually. This section addresses those imported individually, while the issue of lipped laundry tubs imported with cabinets is discussed separately below.

In the case of individually-imported lipped laundry tubs, the Commission has received submissions that claim that these products are not the goods subject to the investigation (and

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hence any subsequent measures) and/or if these products are considered to be the goods and thus subject to the goods description, that they should be exempted from measures in any case.

In support of the above, the Commission has received submissions from interested parties that:

- Tasman does not make lipped tubs but rather makes laundry tubs that are designed to be mounted into a bench top (also referred to as 'inset', 'drop in' or 'flushline' tubs), which require a solid (often wooden) bench or cabinetry for support;
- Tasman does not produce like goods to lipped laundry tubs and as a result these products should not be considered the goods under consideration and hence automatically excluded from the investigation (suggesting that if Tasman does not produce like goods to the full range of the goods subject to the investigation in order for anti-dumping measures to be imposed on the full range of those goods);
- like or directly competitive goods to lipped laundry tubs are not manufactured in Australia and hence lipped laundry tubs should be exempted from any anti-dumping measures that may result from this investigation;
- Tasman does not produce any goods which could be practically substituted for lipped laundry tubs and vice versa;
- lipped tubs are only able to be used for assembly into free-standing laundry units and may not readily be installed into bench tops or cabinetry in the manner that inset tubs are without significant modification due to the existence of the lip;
- Tasman's inset tubs are not able to be readily installed atop a free-standing laundry cabinet without significant modification of the cabinet and/or the tub, and even if this is done there are health and safety risks associated with this (some submissions consider this installation is not possible at all);
- the lipped edge of a laundry tub forms an integral part of the structure of free-standing laundry units once they are installed atop a purpose-designed cabinet and Tasman's sinks do not perform this function;
- to manufacture cabinets that would allow for installation of inset tubs atop these cabinets would require significant investment; and
- lipped laundry tubs and inset tubs have significantly different positions in the market, with lipped tubs being used in basic home laundry configurations and inset tubs used in laundries with bench tops and custom-made joinery.

In addition, Everhard has submitted that:

There is no dispute that lipped bowls are not identical to the goods produced by the Australian industry as the Australian industry does not produce lipped bowls. The issue then is whether lipped bowls have "characteristics closely resembling those of" the goods produced by the Australian industry, which must be interpreted narrowly and not overly stretched.³⁴

³⁴ Everhard, *Submission by Everhard Industries Pty Ltd in response to submission by the Australian industry*, 11 November 2014.

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Everhard goes on to state that there are:

- physical differences between lipped laundry tubs and Tasman's inset tubs, which are so significant that they mean that inset tubs can only be installed into a fixed bench top and lipped tubs can only be installed atop a free standing cabinet;
- commercial differences due to their physical differences which make them not directly competitive;
- functional differences, with inset tubs being more versatile in their use such as in kitchens, bars and bathrooms;
- production differences, requiring different shaped moulds to form and shape the different top edges.

Everhard concludes that the above demonstrates that lipped laundry tubs and inset tubs are not 'like' to Tasman's inset tubs.

In response to the above claims, Tasman has submitted the following.

- Lipped laundry tubs are the goods under consideration (and hence subject to the investigation and any subsequent measures), supporting the Commission's preliminary assessment in Issues Paper 2014/03 that lipped laundry sinks are 'the goods' subject to the investigation, being deep drawn stainless steel sinks of a certain capacity (up to 70L).³⁵
- An Australian industry is not required to manufacture like goods to the full range of the goods subject to the investigation in order for anti-dumping measures to be imposed on those goods, but instead must demonstrate that it makes like goods to the goods under consideration as a whole. Tasman relies on the WTO jurisprudence of the Dispute Settlement Body (DSB) panel decisions in relation to *European Communities — Anti-Dumping Measure on Farmed Salmon from Norway* (EC – Salmon (Norway)) and *European Communities — Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China* (EC – Fasteners (China))³⁶, which it submits conclude that the Australian industry does not have to produce like goods to the full range of goods included in the goods under consideration.
- In any case, the company does produce like goods to lipped laundry tubs in the form of its own range of 'laundry tub bowls', which are designed to be mounted in fixed bench tops (as opposed to on top of free-standing laundry cabinets), hence no exemption should be granted.³⁷
- Further, Tasman's inset laundry tubs are interchangeable, and hence directly competitive with lipped laundry tubs, submitting:

³⁵ Tasman, *Submission of the Australian Industry in Response to Issues Paper 2014/03 – Goods and Like Goods*, 2 December 2014.

³⁶ Everhard has submitted that the Australian industry's reliance on and representations relating to this case are misleading – see Everhard, *Submission by Everhard Industries Pty Ltd in response to submission by the Australian industry*, 11 November 2014.

³⁷ Tasman, *Response of the Australian Industry to the Submissions of the Importer (Everhard Industries Pty Ltd)*, dated 30 October 2014 and *Submission of the Australian Industry in Response to Issues Paper 2014/03 – Goods and Like Goods*, 2 December 2014.

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- it is possible for inset tubs to be installed atop free-standing cabinets that have been designed to accommodate these tubs;
- no modifications are required to inset tubs for their installation in these free standing cabinets;
- it is possible for the lipped bowl to be installed in a fixed bench top or cabinet; and
- no modifications are required to allow for the installation of lipped laundry tubs into a fixed bench top.

It is noted that the illustrative materials used by Tasman in its submissions³⁸ to demonstrate that its inset tubs can be installed in free standing cabinets appear to show these tubs built into cabinets that are of a similar size and style to the free-standing purpose-designed cabinets that are routinely used for the installation of lipped tubs. However, the cabinets displayed by Tasman differ from the free-standing cabinets routinely used to install lipped laundry tubs, being apparently made of wood and having a flat bench top that the inset tub is installed in, as opposed to the metal or plastic cabinets applicable to lipped tubs that have no top but where the lipped tub itself makes the entire top of the unit once set upon the cabinet.

The Commission therefore considers that Tasman does not intend to submit that its inset tub can be installed atop the same type of cabinet that are designed for lipped laundry tubs, but that inset tubs can be installed atop a free-standing cabinet that has similarities to the cabinets used for free standing laundry units.

In relation to its claims that it does produce like goods, Tasman has submitted the company does produce laundry tubs that were made through similar manufacturing processes, had similar physical likeness, and are commercially alike (and hence directly competitive with) individually-imported “lipped” laundry tubs.

In addressing interchangeability and directly competitiveness, Tasman submits that it considers that whether its goods are directly substitutable for lipped laundry tubs is an immaterial consideration in any case. Tasman reiterates its submission that ‘like or directly competitive’ in the context of a Dumping Duty Act exemption should be construed in the same way as ‘like goods’ under the Act. Tasman considers that lipped tubs and inset tubs have characteristics closely resembling each other and are ‘like’ as a result, hence no exemption is warranted.³⁹

In addition to Tasman’s claims in relation to lipped laundry tubs, one importer (GWA) made submissions in relation to free standing laundry units that are imported as ‘kits’ which include ‘lipped’ tubs (summarised below in relation to free standing laundry units). The Commission considers that as ‘lipped’ tubs are included in these laundry units, GWA’s submission is relevant to the Commission’s consideration in relation to this matter.

³⁸ Refer to Tasman, *Submission of the Australian Industry in Response to Issues Paper 2014/03 – Goods and Like Goods*, 2 December 2014.

³⁹ Tasman, *Submission of the Australian Industry in Response to Issues Paper 2014/03 – Goods and Like Goods*, 2 December 2014.

COMMISSION'S ASSESSMENT

Is it necessary for the Australian industry to produce the full range of like goods?

The Commission agrees with Tasman's submission that the Australian industry does not have to produce 'like' goods to the entire range of products included in the goods under consideration in order for the Commission to investigate the full range of the goods under consideration, or for anti-dumping measures to be imposed in relation to those goods.

This is the standard approach applied by the Commission in its investigations into the alleged dumping and/or subsidisation of goods.

Are these goods subject to the goods description?

The Commission has examined the essential characteristics of lipped laundry tubs imported to Australia individually (i.e. not as part of an assembled free-standing laundry unit or a 'kit' thereof – discussed below).

The Commission considers that these imported products fall inside the parameters of the goods description, being deep drawn stainless steel sinks of a certain capacity (up to 70L). Consequently, in the absence of a Parliamentary Secretary exemption, these products are subject to the investigation, and any anti-dumping measures that may result.

Are these goods eligible for an exemption under the Dumping Duty Act?

The applicability of Sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act have been considered in relation to individually-imported lipped laundry tubs.

As a first step, the Commission has considered whether Tasman's inset tubs are 'like goods' to lipped laundry tubs, in line with the considerations applied by the Commission in assessing 'like goods' for the purposes of Part VXB of the Act (see above discussion for rationale of this approach). This involves applying the policy and practice outlined in the *Dumping and Subsidy Manual* in relation to determining whether goods are like each other.

The Commission understands the following.

- Physical likeness:
 - the key physical difference between lipped laundry tubs and Tasman's inset laundry tubs is their edge/lip, with lipped laundry tubs having a lip to allow the insertion atop a purpose-designed cabinet and inset tubs having a flush line designed to allow installation in a bench top or cabinet;
 - both goods are made from stainless steel (see further discussion below in relation to production likeness);
 - both are available in a range of sizes and styles; and
 - the products are classified to the same tariff classification.
- Commercial likeness:

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- generally, free standing units (with lipped sinks) are installed in areas where space is limited and/or a lower-cost option than an inset laundry tub in more solid cabinetry is desired;
- the decision to opt for a bench top and drop in sink over a free standing laundry unit is commonly one of design and functionality, with the option of a drop in sink being considered a more 'high end' option;
- available evidence suggests that there is a significant price difference between a free-standing laundry unit and a fully-installed inset tub (taking into account that the inset tub would require additional higher end (often wooden) cabinetry and installation than a free-standing laundry unit);
- price, design and space considerations are significant features in opting to choose one laundry solution over the other:
 - there are generally substantial differences in these factors between the two options;
 - although Tasman has submitted that inset sinks can be installed atop a laundry cabinet that is of a similar size to the one used for lipped laundry tubs, the Commission understands that this is not the 'norm' and inset laundry tubs are more commonly installed in bench tops that are larger than the space required for a lipped tub-related free-standing unit;
 - the opposite to the above is also possible, with the Commission finding evidence of double bowl-sized lipped laundry tub units (again, this is not the most common occurrence)
- both products appear to be sold through the same distribution channels, with evidence existing of retailers supplying both inset and lipped sinks (installed atop cabinets);⁴⁰
- there would foreseeably be some degree of commercial substitutability between the two options, in circumstances where the end user is flexible in terms of space (noting the above comments that inset tubs can occupy the same space as lipped laundry tubs), price and design which may cause them to choose one over the other (noting they are sold through the same distribution channels, meaning that some end users would compare the two when making purchasing decisions); and
- in other cases, where price and space are paramount considerations, it is less likely that there will be commercial substitution between the two.
- Functional likeness:
 - both serve an identical purpose and end use of holding and draining water in laundry applications;

⁴⁰ For example, see <http://www.harveynormancommercial.com.au/laundry/laundry-tubs.html>.

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- the products are of comparable quality (though difference in thickness of steel may exist and the bench top in which they sit is considered to be of different quality, but this does not relate to the sink itself); and
 - there are conflicting submissions as to whether an inset tub can be practically installed in the same manner as lipped laundry tub atop a purpose-built laundry cabinet and whether the opposite is practically possible, though the balance of evidence suggests that this is not practicable or commercially viable
- Production likeness:
 - the key component of the two products, the laundry tub bowls, are manufactured through the same production process of deep-drawing sheet steel in a press;'
 - both products include elements of welding and polishing in the manufacturing process;
 - both goods are manufactured from the same raw material, being 304 grade stainless steel, though this can be of varying thicknesses;
 - different production processes (including dies for pressing) are required to manufacture the edges (i.e. lip or standard edge) of the sinks.

On the balance of factors discussed above and information available, the Commission considers that the Australian industry does produce 'like goods' to lipped laundry tubs. In arriving at this determination, particular emphasis has been placed on the fact that the goods have the same end use, have some commercial likeness, are physically similar with the main point of difference being only the edging that impacts their installation, and are produced using similar production processes.

Noting the Commission's assessment above that:

- if likeness is demonstrated, there is no need to satisfy the element of direct substitutability; and
- Tasman's products are offered for sale in line with the conditions of Subsections 8(7)(a) and 10(8)(a)

the Commission considers that the requirements of an exemption under the relevant provisions of the Dumping Duty Act are not satisfied, and it proposes to should recommend that the Parliamentary Secretary not exercise his discretion under the Dumping Duty Act to exclude individually-imported lipped laundry tubs from any anti-dumping measures that may result from this investigation.

III(ii) FREE-STANDING LAUNDRY UNITS

SUBMISSIONS RECEIVED BY THE COMMISSION

The Commission has received submissions from various interested parties that relate to the importation of what has been described as 'free standing laundry units'. The free standing laundry units comprise of:

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- a free-standing laundry cabinet, often including a door, that is designed for use with a lipped laundry tub installed on top of the cabinet ;
- a lipped laundry tub (discussed in detail above); and
- additional items that accompany the free standing unit such as water hoses, washing machine hose tap connections, cabinet feet, etc.

The laundry tub component of these imports has been produced through a deep drawing process (i.e. they are not 'fabricated' sinks, specifically excluded from the investigation).

These stand-alone laundry units can either be imported 'flat-packed' for assembly in Australia, or as a fully assembled unit, ready for sale and installation. In either case, these items are purchased by Australian importers as one 'unit', and commonly invoiced as such from the supplier,⁴¹ although those purchased as a flat-pack can be considered to be a laundry unit 'kit' for later assembly rather than a completed unit at the time of importation.

In relation to both of these products (flat packed and fully assembled free standing laundry units), various importing parties have submitted that:

- the imported free standing laundry units are not covered by the scope of the investigation as they cannot be considered to be a 'deep drawn stainless steel sink' in line with the description of the goods (see Section 3.2); or
- if these goods are included in the goods description, they should nonetheless be exempted from any anti-dumping measures, due to the fact that Tasman does not manufacture or sell similar free-standing laundry units and thus no products in Tasman's product range are like or directly competitive to these imported goods.

To support these claims, interested parties have submitted that:

- standalone laundry units are not commercially substitutable for inset tubs;
- the standalone nature of the laundry unit 'distances' it from potential competition with Tasman's inset tubs;⁴²
- there is a clear distinction between the only function of Tasman's inset tubs (to collect and drain water) and free-standing laundry units which have 'storage functions and extensive washing functions', such that they are 'a complete fresh and waste water management system in the laundry';⁴³ and
- while free standing laundry units share the sink function of inset tubs, there is no basis to conclude that this is the primary function of free standing laundry units;⁴⁴

In response, Tasman has submitted⁴⁵ that it considers that these goods should be subject to the investigation and any subsequent anti-dumping measures. Tasman contends that these

⁴¹ The Commission has verified evidence from importing parties that this is the case.

⁴² Seima, *Submission in response to the Issues Paper 2014/03*, 2 December 2014.

⁴³ Holman Webb on behalf of Shriro, *Response to the Submission made by Tasman against Shriro*, 14 October 2014.

⁴⁴ Holman Webb on behalf of Shriro, *Response to the Submission made by Tasman against Shriro*, 14 October 2014.

⁴⁵ Tasman *Response of the Australian Industry to the Submissions of the Importer (Shriro)*, dated 22 September 2014 and *Submission of the Australian Industry in Response to Issues Paper 2014/03 – Goods and Like Goods*, 2 December 2014.

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products are covered by the goods description, which it highlights targets deep drawn stainless steel sinks within a certain size range, whether or not including accessories. Tasman submits that the laundry cabinet and related parts that accompany the lipped laundry tub that sits atop this cabinet are considered 'accessories'. Tasman claims that these products were specifically considered in formulating the goods description in its application.

Tasman reiterated these views in a later submission and also argued – similarly to the arguments put forward against exemptions for “lipped” tubs – that laundry cabinets are a sub-category of the goods and to exclude these items from the investigation or anti-dumping measures on that basis would be inconsistent with WTO jurisprudence and Australian legislation.⁴⁶

In its Issues Paper 2014/03, the Commission published its preliminary view that the term 'accessories' in the description of the goods under consideration does not extend to the laundry cabinet that lipped laundry tubs are imported alongside to make a laundry unit. Tasman has disagreed with the preliminary findings in the Issues Paper on this matter. In doing so, Tasman submits that the Commission's approach to not considering laundry cabinets to be 'accessories' is an interpretive error.⁴⁷

Having submitted that free standing laundry units that incorporate a lipped laundry tub do fall inside the goods description, Tasman submits these should not be exempted from measures as they are substitutable (and hence directly competitive) with the Australian industry's range of laundry tubs, including the T145, T145S and T170 products manufactured by Tasman.

Tasman contends that, in considering this matter, attention should be paid to the fact that the free standing laundry units 'perform the function of a sink' in the same way as Australian-manufactured laundry tubs. Tasman submitted that the inclusion of the cabinet and related items do not change the tub component of the laundry units from having the nature of the “seamless stainless steel bowls” covered by the goods description, and that these products have the same end use as the laundry tubs manufactured by Tasman - the “collecting and draining a controlled volume of water in a manner consistent with plumbing standards”.

Tasman also submitted that importing entities could substitute the imported tubs contained in the free standing laundry units (presumably only those that are provided unassembled) with those laundry tubs currently manufactured by Tasman, or with items Tasman is capable of manufacturing.

In support of the Australian industry, one importer (GWA) submitted that it considers that free standing laundry units exported from China should be considered “the goods” because these items serve the same functional purpose as laundry sinks designed to be mounted into a bench top, and thus if anti-dumping measures were applied end users would likely shift their buying preferences towards 'drop-in' sinks.⁴⁸ GWA further states that these products are 'commercially like' to laundry tubs produced by Tasman as they directly compete in the

⁴⁶ Tasman *Response of the Australian Industry to the Submissions of the Importer (Everhard Industries Pty Ltd)*, dated 30 October 2014.

⁴⁷ Tasman *Submission of the Australian Industry in Response to Issues Paper 2014/03 – Goods and Like Goods*, 2 December 2014.

⁴⁸ GWA submission dated 3 September 2014.

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market, noting that purchasers 'may be swayed by a significant shift in the price differential between the 'drop in tub' and a tub and cabinet.

COMMISSION'S ASSESSMENT

Are these goods subject to the goods description?

The Commission has examined the essential characteristics of free-standing laundry unit kits (that include a lipped laundry tub).

The Commission notes the fact that these imported products contain a significant number of additional elements other than a deep drawn stainless steel bowl and 'accessories', and they no longer are considered to essentially be a deep drawn stainless steel sink and accessories, but rather are free-standing laundry units that include a deep drawn stainless steel sink, but is not in itself such a sink.

In determining the above, information gathered from interested parties has shown that, despite Tasman's claims that the term 'accessories' in the goods description is intended to include such items as a laundry cabinet and related items, the term 'accessories' has a widely accepted definition in the industry to mean:

- additional items to the sink that are related to food preparation associated with the sink; and
- in some cases, basket wastes (plugs) and drainage pipes that are routinely provided with the sink (though these are not widely accepted as being 'true' accessories but are merely included in the group of items supplied to customers that are not physically attached to the sink at the time of sale).

'True' accessories include chopping boards, taps, colanders, bowl protectors, utility trays and drainer baskets. These 'accessories' are considered to be covered by the genuine sense of the term 'accessory', being 'a thing which can be added to something else in order to make it more useful, versatile, or attractive'.⁴⁹ This is distinct from items that are added to another item to make them usable at all (i.e. without these they would be of no or restricted use), as opposed to making the product more useful.

In light of the above, the Commission does not consider that a laundry cabinet, which is required to be present to make the lipped tub that sits atop the cabinet functional is an 'accessory' but rather an essential element to enable the product to be functional.

In the case of lipped laundry tubs that sit atop laundry cabinets, these products are of no (or very limited) use without these cabinets, and hence the cabinets (the are the essential item that convert these products from simply a deep drawn stainless steel sinks sink into a laundry unit) are more reasonably considered essential elements than 'accessories'. To interpret the laundry cabinet as an 'accessory' would mean that similarly, where inset laundry tubs are installed in cabinetry or a bench top, those fixtures would also be considered 'accessories'.

⁴⁹ As defined by the Oxford English Dictionary (<http://www.oxforddictionaries.com/>)

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Consequently, the Commission considers that these products do not fall inside the parameters of the goods description, and hence are not subject to this investigation or any anti-dumping measures that may result from the investigation.

The commission notes that, in order for imported products to be considered to fall in this category of 'free standing laundry units', the products must, at the time of importation, contain all the components necessary to be considered to be a 'laundry unit' in and of themselves. In the case of products imported fully assembled, this requirement is easily satisfied. In the case of unassembled units, the imported goods must comprise the majority of the necessary parts to be assembled into a free standing laundry unit. In essence, this means that the importation must include the cabinet itself. These would logically need to be shipped in the same shipment, from the same supplier, and sold as one 'unit'.

In addition, where the units are imported unassembled, the number of cabinets at the time of importation must correlate to the number of lipped laundry tubs that are claimed to be not subject to the goods description as they are part of a laundry unit. For example, if a consignment consist of 100 lipped laundry tubs and only one cabinet, then the 99 excess lipped laundry tubs are considered to fall into the category of individually-imported lipped laundry tubs discussed above.

Are these goods eligible for an exemption under the Dumping Duty Act?

This is consideration is not necessary, as these goods are not subject to the investigation and hence the exemption provisions of the Dumping Duty Act do not apply.

III(iii) CLEANER'S SINKS AND HAND WASH BASINS

SUBMISSIONS RECEIVED BY THE COMMISSION

The Commission received submissions by various interested parties that hand wash basins and cleaner's sinks are not 'the goods' subject to the investigation, or, if these products are the goods, they should be exempted anti-dumping measures in any case.

The Commission understands that cleaner's sinks are generally comprised of a stainless steel bowl, which may be deep drawn⁵⁰ and a steel 'splash back' or upturned rear edge of various heights that are installed against a wall. These sinks often come with a grate that sits atop the sink (to allow placement of buckets), often have a steel 'lip' (similar in appearance to lipped laundry tubs) as the front façade and may or may not be accompanied by legs that provide support for the product when installed.

It is understood that hand wash basins generally are made of a deep drawn stainless steel bowl⁵¹ and a steel 'splash back' of various heights that allows for wall installation. As with cleaner's sinks, hand wash basins often have a lipped fascia and may have supporting legs for installation.

⁵⁰ Where the bowl is fabricated the Commission notes the goods are specifically excluded from the investigation due to the nature of the bowl.

⁵¹ As with cleaner's sinks, these may be of a fabricated nature and are thus specifically excluded from the investigation.

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Parties seeking exemption for these goods claim that they differ from Tasman's production due to the following:

- production differences, with the imported products including a deep drawn bowl but also including welded, bent and hand polished components
- physical characteristics, including:
 - having a "lipped" edge and a fascia;
 - incorporating a rear splashback and/or a wall mounting bracket;
 - being wall-mounted as opposed to installed in bench tops;
 - in the case of hand wash basins, not being flat-bottomed (i.e. being rounded in cross-section) and hence not suitable for holding plates in the same way as a kitchen sink;
 - in the case of hand wash basins, having 40mm-sized outlets (drains) as opposed to the standard 50mm or 90mm of other sinks;
 - in the case of hand wash basins being 15.5L in capacity and hence not suitable for laundry purposes
- end use:
 - used in industrial settings such as at medical facilities, commercial kitchens or workshops to clean hands or specifically facilitate cleaning (particularly the filling and emptying of mop and other buckets) while Tasman's products are primarily for domestic use in food preparation and laundry applications; and
 - not able to be installed in bench tops or cabinets in the same way as Tasman's inset sinks are, due to the lipped fascia
- commercial distribution, with supply being through a network of food service equipment distributors and certain specialised plumbing chains while Tasman's products are sold via standard plumbing distributors or to domestic builders.

In a letter dated 29 October 2014, one importer that had previously lodged a submission in relation to hand wash basins and cleaner's sinks (outlined above), clarified that it was its intention to seek a Tariff Concession Order (TCO) in relation to these imported products and pursue an exemption based on this TCO⁵², rather than an exemption on 'any broader description or basis'.⁵³

The Commission is not aware of any such TCO having been granted, and is yet to receive any application by this importer for a TCO-based exemption.

Despite this importer's clarification of its intention to seek a TCO-based exemption rather than an exemption under Sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act based on the absence of like or directly competitive goods being manufactured in Australia, the Commission considers that it is not precluded from examining the applicability of an exemption under Sections (8)(7)(a) or 10(8)(a) in the absence of this importer's specific request for such an exemption.

⁵² In accordance with Sections 8(7)(b) and 10(8)(aa) of the Dumping Duty Act.

⁵³ Submission by Tom Stoddart Pty Ltd.

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The Commission considers that it is not limited to examining the applicability of any exemption-related section of the Dumping Duty Act to cases where an interested party has specifically applied for or requested this to be considered (though this process may be commenced after the making of a formal application for exemption).

In any case, the Commission notes that another importer has requested that the goods be exempted from measures based on like or directly competitive goods considerations.

In its response to Issues Paper 2014/03,⁵⁴ Tasman addressed the issue of cleaner's sinks and hand wash basins. In that submission, Tasman welcomed the preliminary finding of the Commission in the Issues Paper that these products are the goods under consideration, but the company did not express any opposition to, or support of, an exemption under subsections 8(7)(a) or 10(8)(a) of the Dumping Duty Act.

However, Tasman submitted that:

- cleaner's sinks and hand wash basins constitute deep drawn stainless steel sinks with a number of accessories, including wall mounting brackets;
- the wall mounting bracket is the key distinguishing characteristic;
- Tasman is 'capable of supplying into any distribution network responsible for the supply of sink and sink-related products', indicating that Tasman does not consider this to be a point of difference between its products and cleaner's sinks and hand wash basins.

Due to the examined products (cleaner's sinks and hand wash basins) being different in their characteristics, the Commission has assessed each separately below.

COMMISSION'S ASSESSMENT – CLEANER'S SINKS

Are these goods subject to the goods description?

The Commission has examined the characteristics of imported stainless steel cleaner's sinks and considers that these products are captured by the description of the goods, being deep drawn stainless steel sinks of a certain capacity (regardless of them including additional components).

The Commission therefore considers that, in the absence of a Parliamentary Secretary exemption, these products are subject to the investigation, and any anti-dumping measures that may result.

Are these goods eligible for an exemption under the Dumping Duty Act?

The applicability of Sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act have been considered in relation to cleaner's sinks and hand wash basins.

The Commission understands the following.

- Physical likeness:

⁵⁴ Tasman *Submission of the Australian Industry in Response to Issues Paper 2014/03 – Goods and Like Goods*, 2 December 2014.

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- the key physical differences between cleaner's sinks and the inset sink-style production of the Australian industry are:
 - the inclusion of rear splashbacks and/or wall mounting brackets that the Commission understands are welded to the sink and used in installation and may allow for them to be free-standing (i.e. not inset into a bench top or cabinet);
 - the inclusion of legs with some cleaner's sinks for installation purposes;
 - the lipped fascia of cleaner's sinks as opposed to the standard lip of inset sinks produced by Tasman;'
- both goods are made from stainless steel (see further discussion below in relation to production likeness); and
- the products are classified to the same tariff classification.
- Commercial likeness:
 - generally, cleaner's sinks are installed in commercial, institutional or health care applications for environment cleaning purposes, while Tasman's sinks are installed in domestic applications for food preparation and laundry use;
 - utility for facilitating the cleaning of environments is likely to be paramount e.g. the products need to be easily accessible and able to assist in the function of cleaning the environment;
 - it is considered possible that end users may switch between Tasman's inset sinks and cleaner's sinks in certain circumstances, though this is unlikely due to the following:
 - Tasman's products need to be installed in bench tops or cabinets while cleaner's sinks are free-standing and can be installed at a lower height, which may allow cleaner's sinks to be a more practical solution for environmental cleaning purposes (where practicality would be a paramount consideration);
 - as cleaner's sinks can be free-standing they require less space and allow more flexibility in accessing the sinks than an inset sink installed in a bench top or cabinet;
 - the installation of an inset sink and cabinet is likely to be significantly more expensive than a free-standing cleaner's sink and hence the issues associated with requiring cabinetry or a bench top are not surpassed by a price advantage;
 - the products do not appear to be sold through the same distribution channels, with limited evidence existing of suppliers of Tasman's production also supplying cleaner's sinks (being distributed through more specialised distributors).
- Functional likeness:

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- both Tasman's sinks and cleaner's sinks can be used for the same purpose of storing and draining water for environmental cleaning purposes, indeed, although Tasman's sinks may be installed in domestic applications for food preparation and laundry purposes, they would likely be used for the cleaning of the domestic environment as well;
 - the products are of comparable quality (though difference in thickness of steel are may exist);
 - as outlined above, it is considered that cleaner's sinks are a more practical solution for the purpose of environmental cleaning, mainly due to their height flexibility.
- Production likeness:
 - the key component of the two products, the bowls, are manufactured through the same production process of deep-drawing sheet steel in a press;
 - both products include elements of welding and polishing in the manufacturing process;
 - both goods are manufactured from the same raw material, being 304 grade stainless steel, though this can be of varying thicknesses;
 - different production processes (including dies for pressing) are required to manufacture the edges (i.e. lip or standard edge) of the sinks.

On the balance of factors discussed above and information available, the Commission considers that the Australian industry does not produce 'like goods' to lipped laundry tubs. In arriving at this determination, particular emphasis has been placed on the fact that, although the goods have similar physical and production likeness:

- they do not possess commercial likeness; and
- while there is some functional likeness between the two products, a key consideration for a cleaner's sink is likely to be practicality for its use, and cleaner's sinks are likely to exceed a Tasman-manufactured inset sink in a bench top or cabinet in this regard.

Does the Australian industry produce 'directly competitive' goods?

Having determined that the Australian industry does not produce like goods to cleaner's sinks, the Commission has assessed whether Tasman produces 'directly competitive' goods to those sinks. As outlined above, this requires considering whether a commercial relationship exists in the marketplace between the two products, having regard to the commercial uses of the products.

Considering the above points in relation commercial likeness of cleaner's sinks and Tasman's inset sinks, it is considered that no such commercial relationship exists between these products, and hence they are not directly substitutable.

In light of this, the Commission considers that the requirements of an exemption under the relevant provisions of the Dumping Duty Act are satisfied, and it proposes to recommend that

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the Parliamentary Secretary exercise his discretion under the Dumping Duty Act to exclude cleaner's sinks from any anti-dumping measures that may result from this investigation.

In making this recommendation, the Commission is required to recommend a description of the goods that the Parliamentary Secretary should exempt from anti-dumping measures. The Commission proposes the following description of exempted goods:

Cleaner's sinks that are comprised of a deep drawn stainless steel bowl and stainless steel splashback or upturned rear edge that is designed for fixture against a wall.

COMMISSION'S ASSESSMENT – HAND WASH BASINS

Are these goods subject to the goods description?

The Commission has examined the characteristics of imported stainless steel hand wash basins and considers that these products are captured by the description of the goods, being deep drawn stainless steel sinks of a certain capacity (regardless of them including additional components).

The Commission therefore considers that, in the absence of a Parliamentary Secretary exemption, these products are subject to the investigation, and any anti-dumping measures that may result.

Are these goods eligible for an exemption under the Dumping Duty Act?

The applicability of Sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act have been considered in relation to cleaner's sinks and hand wash basins.

The Commission understands the following.

- Physical likeness:
 - the key physical differences between hand wash basins and the inset sink-style production of the Australian industry are:
 - inclusion of rear splashbacks and/or wall mounting brackets, that the Commission understands are welded to the sink and used in installation and may allow for them to be free-standing (i.e. not inset into a bench top or cabinet);
 - capacity (with cleaner's sinks being smaller in capacity to Tasman's inset sinks);
 - shape, with hand wash basins having a rounded-bottom bowl as opposed to the flat bottom of inset sinks;
 - waste outlet (drain) size;
 - the lipped fascia of hand wash basins as opposed to the standard lip of inset sinks produced by Tasman;

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- both goods are made from stainless steel (see further discussion below in relation to production likeness); and
- the products are classified to the same tariff classification.
- Commercial likeness:
 - generally, hand wash basins are installed in commercial, institutional or health care applications for hand washing purposes, while Tasman's production are installed in domestic applications for food preparation and laundry use;
 - hand wash basins are specifically designed for the purpose of performing a hand washing function, and are likely marketed in this way;
 - utility for facilitating the cleaning of hands is likely to be paramount e.g. the products need to be easily accessible and facilitate the cleaning of hands;
 - it is considered possible that end users may switch between Tasman's inset sinks and cleaner's sinks in certain circumstances, though this is unlikely due to:
 - the fact that Tasman's products need to be installed in bench tops or cabinets while hand was basins are free-standing and smaller in size, allowing for more flexible installation such as alongside hallways in hospitals where conserving hallway space as a thoroughfare would be an important consideration;
 - the installation of an inset sink and cabinet is likely to be significantly more expensive than a free-standing hand wash basin and hence the issues associated with requiring cabinetry or a bench top are not negated by a price advantage;
 - end users looking to install a kitchen or laundry sink for food preparation or laundry purposes are unlikely to instead install a hand wash basin, due to their small capacity, rounded bottom and difficulty in being installed into a cabinet or bench top due to their lipped fascia
 - the products do not appear to be sold through the same distribution channels, with limited evidence existing of suppliers of Tasman's production also supplying cleaner's sinks (being distributed through more specialised distributors).
- Functional likeness:
 - both Tasman's sinks and hand washing basins can be used for the same purpose of washing hands, though Tasman's sinks are primarily used in kitchen and laundry applications for food preparation and laundry purposes, though they can and are often used for hand washing purposes;
 - the products are of comparable quality (though difference in thickness of steel may exist); and

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- as outlined above, it is considered that hand washing basins are a more practical solution for the purpose of hand cleaning in certain applications like a hospital, due to their size and accessibility.
- Production likeness:
 - the key component of the two products, the sink bowls, are manufactured through the same production process of deep-drawing sheet steel in a press;
 - both products include elements of welding and polishing in the manufacturing process;
 - both goods are manufactured from the same raw material, being 304 grade stainless steel, though this can be of varying thicknesses;
 - different production processes (including dies for pressing) are required to manufacture the edges (i.e. lip or standard edge) of the sinks.

On the balance of factors discussed above and information available, the Commission considers that the Australian industry does not produce 'like goods' to lipped laundry tubs. In arriving at this determination, particular emphasis has been placed on the fact that, although the goods have similar physical and production likeness:

- they do not possess commercial likeness; and
- while there is some functional likeness between the two products, a key consideration for a sink whose specific purpose is for hand washing is likely to be practicality for its use, size, and accessibility, which purpose-designed hand wash basins are likely to be sustainably more suited for than one of Tasman's larger inset sinks.

Does the Australian industry produce 'directly competitive' goods?

Having determined that the Australian industry does not produce like goods to hand wash basins, the Commission has assessed whether Tasman produces 'directly competitive' goods to those sinks. As outlined above, this requires considering whether a commercial relationship exists in the marketplace between the two products, having regard to the commercial uses of the products.

Considering the above points in relation commercial likeness of hand wash basins and Tasman's inset sinks, it is considered that no such commercial relationship exists between these products, and hence they are not directly substitutable.

As a result, the requirements of an exemption under the relevant provisions of the Dumping Duty Act are satisfied, and the Commission proposes to recommend that the Parliamentary Secretary exercise his discretion under the Dumping Duty Act to exclude hand wash basins from any anti-dumping measures that may result from this investigation.

As with cleaner's sinks, in making this recommendation, the Commission is required to recommend a description of the goods that the Parliamentary Secretary should exempt from anti-dumping measures. The Commission proposes the following description of exempted goods:

SEF 238 Deep Drawn Stainless Steel Sinks - China

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Hand wash basins that are comprised of:

- *a deep drawn stainless steel bowl with a rounded or concave basin (i.e. not flat-bottomed); and*
- *a stainless steel splash back or upturned rear edge that is designed for fixture against a wall.*

III(iv) TIGHT CORNER RADIUS SINKS

SUBMISSIONS RECEIVED BY THE COMMISSION

The Commission received submissions by interested parties that highlight the importation of what have been referred to as ‘tight corner radius sinks’. In addition, the Commission has received a formal request for an exemption for these types of sinks under Sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act from Abey.⁵⁵ The sinks subject to the exemption request are defined in that exemption as deep drawn stainless steel sinks with a corner radius of 25mm or less.

These sinks are produced through a deep drawing manufacturing process but differ from ‘traditional’ deep drawn stainless steel sinks in that they undertake an additional annealing and second-drawing process that other deep drawn stainless steel sinks do not undergo. The result is a deep drawn stainless steel sink with squarer corners than traditional deep drawn stainless steel sinks, with an appearance similar to fabricated sinks (excluded from the investigation).

There has been no suggestion that these products should not be considered ‘the goods’, as they are clearly deep drawn stainless steel sinks. However, interested parties have submitted that these goods should be subject to an exemption from any anti-dumping measures that may result from the investigation as Tasman does not produce like or directly competitive goods to these products.

Specifically, interested parties have asserted:

- tight corner radius sinks differ from those produced by Tasman in terms of physical characteristics (squarer corners, which serve an aesthetic purpose and also result in an increase in water capacity for a similar physically-sized sink);
- these sinks are manufactured through a different production process when compared to those produced by Tasman (specialised moulds and annealing equipment are required to produce these sinks through a two-stage process, with specialised labour overseeing the production process);
- tight corner radius sinks have a more modern style than traditional deep drawn stainless steel sinks, and this is the consumer preference in recent times;

⁵⁵ Dated 13 October 2014.

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- these products sit in a different tier in the market to traditional deep drawn stainless steel sinks, with their price being significantly higher than similar characteristic deep drawn stainless steel sinks, operating in different product categories with different target markets;
- the key characteristics that differentiate tight corner radius sinks from traditional deep drawn stainless steel sinks are price and design (with price being considerably higher for tight corner radius sinks and these sinks having a more modern design);⁵⁶
- substitution of products from 'normal' sinks to tight corner radius sinks is not typical;⁵⁷
- these products are more 'like' to fabricated sinks than traditional deep drawn stainless steel sinks in both appearance and practical use (squarer corners and greater capacity);
- Tasman does not have the ability to produce tight corner radius sinks;
- Tasman's range includes tight corner radius sinks that the imports itself, indicating that they are not the same as Tasman's range of manufactured deep drawn sinks and that tight corner radius sinks are not substituting for Australian production;
- even if dumping and/or countervailing duties are applied, Tasman is unlikely to invest in the high cost of extending its manufacturing capability to these types of sinks;
- although there is a degree of likeness and is 'a certain extent of competition' between traditional deep drawn stainless steel sinks and tight corner radius sinks, they cannot be defined as 'closely like' (which the submitting party, Komodo, contends should be the required test for an exemption under the relevant provisions of the Dumping Duty Act);⁵⁸

Tasman has submitted its opposition to the suggestion that tight corner radius deep drawn sinks should be excluded from the investigation. In doing so, Tasman submits that its traditional deep drawn stainless steels sinks are like or directly competitive to tight corner radius sinks.⁵⁹

In submitting the above, Tasman observes:

- there are significant production process similarities between its own deep drawn stainless steel sinks and tight corner radius sinks, with the only real difference being in the annealing process;
- the sinks market in Australia operates with several product 'tiers' that are driven less by product offering, and more by marketing and value perceptions, and tight corner radius

⁵⁶ Abey, *Issues Paper 2014/30: Submission by Abey Australia Pty Ltd*, 2 December 2014.

⁵⁷ Siema Pty Ltd, *Response to Issues Paper 2014/03*, 2 December 2014.

⁵⁸ Komodo, *Submission of Products Exemption in Response to Issues Paper 2014/03 of the Commission on Goods and Like Goods*, 27 November 2014.

⁵⁹ But also noting that, where it can be satisfied that the Australian industry produces 'like' goods to the goods subject to the exemption examination, there is no allowance for an exemption under the Dumping Duty Act – Tasman, *Tasman Submission of the Australian Industry in Response to Issues Paper 2014/03 – Goods and Like Goods*, 2 December 2014 (which makes reference to Tasman's *Response of the Australian Industry to the Submission of the Importer*, 30 September 2014).

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sinks and traditional deep drawn stainless steel sinks are capable of operating in the same tier;

- evidence exists that tight corner radius sinks operate in lower as well as higher market tiers (supported by advertisements of what Tasman alleges are tight corner radius sinks);
- it is not open for the Commission to conclude that tight corner radius sinks do not compete with Tasman's deep drawn stainless steel sinks.

In addition, Tasman has submitted that submissions made to the investigation that Tasman imports tight corner radius sinks itself are erroneous, having previously imported a small range of these to 'price compete with dumped product' but having since abandoned the importation of these sinks and other deep drawn stainless steel sinks to focus on maintaining and supporting its Australian manufactured range.⁶⁰

COMMISSION'S ASSESSMENT

Are these goods subject to the goods description?

As outlined above, there has been no suggestion that tight corner radius sinks are not the goods, clearly being deep drawn stainless steel sinks that fall within the goods description.

Are these goods eligible for an exemption under the Dumping Duty Act?

The Commission has assessed whether Sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act apply to tight corner radius sinks.

The Commission understands the following.

- Physical likeness:
 - the key physical differences between Tasman's deep drawn stainless steel sinks and tight corner radius sinks are:
 - corner radius; and
 - capacity (with tight corner radius sinks being able to hold a higher water capacity than traditional deep drawn sinks by virtue of their smaller corners, though this would logically not be substantially more)
 - both goods are made from stainless steel (see further discussion below in relation to production likeness); and
 - the products are classified to the same tariff classification.
- Commercial likeness:

⁶⁰ Tasman, email submission of 4 December 2014.

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- tight corner radius sinks and traditional deep drawn stainless steel sinks are installed in the same applications, predominantly being domestic kitchen and laundry applications;
 - there can be a significant price difference between Tasman's deep drawn stainless steel sinks and tight corner radius sinks of a similar configuration, though there is also evidence to suggest this is not always the case;
 - it is considered possible that end users may switch between Tasman's deep drawn stainless steel sinks and tight corner radius sinks (see further discussion below);
 - the products are sold through the same distribution channels, often being displayed aside each other in showrooms and stores, allowing purchasers to directly compare the two types of sinks.
- Functional likeness:
 - both products are primarily installed in kitchens and laundries for domestic food preparation and cleaning use, having the same end use in;
 - the products are of comparable quality (though difference in thickness of steel may exist); and
 - consumer preference have shifted more towards sinks with a tighter corner radius (i.e. 'squarer' sinks) than traditional deep drawn stainless steel sinks, favouring tight corner radius sinks over deep drawn stainless steel sinks.
 - Production likeness:
 - the key component of the two products, the sink bowls, are manufactured through a deep-drawing process;
 - both goods are made from the same raw material, being 304 grade stainless steel sheet (though thickness of this steel may vary);
 - the key difference is that tight corner radius sinks go through an annealing process prior to their second deep-draw, which allows for the necessary stretching of the steel into tight corners;

Additional considerations on commercial likeness

In terms of additional considerations of commercial likeness, the Commission understands that, in the stainless steel market in Australia there exists a product 'continuum', whereby the full range of stainless steel sinks available to purchase ranges considerably from bottom-tier, inexpensive sinks that are generally of the deep drawn variety, through to top-tier, high-priced sinks that are fully fabricated (not the goods). Between these two extremes, there exists a large variety of sinks, with what can be described as a 'spectrum' consisting of deep drawn and fabricated products, with the deep drawn products including tight corner radius sinks.

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The Commission understands that tight corner radius deep drawn stainless steel sinks may most commonly fit in the continuum between traditional deep drawn stainless steel sinks and fabricated sinks, being:

- more expensive than traditional deep drawn sinks but cheaper than fabricated sinks; and
- more modern in design than deep drawn sinks but less 'square' (and hence less modern) than fabricated sinks.

However, Tasman has provided evidence to suggest that tight corner radius sinks can also be considered to sit in the lower end of the stainless steel sinks continuum, and hence not necessarily defined as being higher in price than traditional deep drawn stainless steel sinks. During its investigation the Commission has observed examples where tight corner radius sinks of a similar configuration and size do not appear to be significantly more expensive than similar size and configuration standard deep drawn stainless steel sinks.

The Commission's discussions with Tasman during the verification visit indicated that Tasman considers that its product range offers models that fit into each level of the abovementioned product continuum (i.e. the company did not highlight a 'gap' between its top-level deep drawn stainless steel sinks and its fabricated sinks). This is contrary to the opinions submitted by other interested parties that seem to consider these tight corner radius sinks fit in a separate market category that doesn't compete with Tasman's production.

The Commission's investigations have shown that various factors are present in the mind of the end user when determining what stainless steel sink they should purchase, including:

- price;
- design;
- functionality;
- available space for the installation of the product; and
- quality.

Considerations such as the above will influence the end user in making decisions not only amongst deep drawn stainless steel sinks themselves, but also between deep drawn stainless steel sinks and fabricated sinks. End users may directly compare these two types of sinks when making their purchasing decision. For example, an end user might be deciding between a top-level deep drawn stainless steel sink and a lower-level fabricated sink, and may be swayed to opt for the deep drawn stainless steel sink though they prefer the design of the fabricated sink, based on it being a lower price than the fabricated sink.

In light of the above, the Commission considers that there is likely to also be commercial 'overlap' between traditional deep drawn stainless steel sinks and tight corner radius sinks. The Commission therefore considers it likely that Tasman's Australian-manufactured deep drawn stainless steel sinks are commercially like to tight corner radius sinks.

Conclusion

Having regard to the above, the Commission considers that tight corner radius sinks are like to the deep drawn stainless steel sinks produced by Tasman, and hence the provisions for an exemption from anti-dumping measures under Sections 8(7)(a) and 10(8)(a) of the Dumping

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Duty Act do not apply. In coming to this assessment, the Commission notes that there exists physical, function, commercial and production likeness between these products.

The Commission proposes that it will not recommend to the Parliamentary Secretary that he grant an exemption from anti-dumping measures in relation to tight corner radius deep drawn stainless steel sinks.

NON-CONFIDENTIAL APPENDIX 3 – ASSESSMENT OF REASONABLENESS OF STAINLESS STEEL COSTS IN CHINA AND DETERMINATION OF A COMPETITIVE MARKET SUBSTITUTE PRICE

PART IV OVERVIEW

As outlined in Section 6.6.1, in determining the cost of manufacture for exporters of the goods when constructing normal values under Section 269TAC(2)(c), regard must be had to Regulation 180(2), which provides where:

- an exporter or producer keeps records relating to like goods that are in accordance with generally accepted accounting principles (GAAP) in the country of export; and
- those records reasonably reflect competitive market costs associated with the production or manufacture of like goods;

the Parliamentary Secretary must work out the cost of production or manufacture using information set out in the exporter's or producer's records.

This assessment necessarily involves examining the costs incurred by manufacturers of the goods, and assessing their reasonableness in the context of a competitive market and compliance with the applicable GAAP.

PART V ASSESSMENT OF COMPLIANCE WITH GAAP

During this investigation, the Commission has assessed that the accounting records of all Chinese selected exporters have been kept in accordance with the Chinese GAAP (with reference to the auditor's opinions in each company's audited financial statements).

PART VI ASSESSMENT OF COSTS REASONABLENESS – STAINLESS STEEL COIL

VI(i) TASMAN'S CLAIMS

As outlined in Section 6.4.1, Tasman asserts that, when normal values are constructed under Section 269TAC(2)(c), the cost of stainless steel raw material inputs in the records of Chinese manufacturers of the goods does not reasonably reflect a competitive market costs for that input and should be substituted with a competitive market cost.

In making these claims, Tasman submits that the reasonableness of these costs has been impacted by GOC influence in the Chinese iron and steel industry. These influences also form the basis of Tasman's claims of the existence of a market situation in China.

The application submits that GOC involvement in the Chinese domestic steel market has 'materially distorted competitive conditions, in terms of input costs [for deep drawn stainless steel sinks]'. As part of this GOC involvement, Tasman alleges that the purchase of the major raw material input into deep drawn stainless steel sinks (cold-rolled stainless steel) from state-invested enterprises (SIEs) occurs at less than fair market value on the Chinese domestic market, and this is 'distorting competitive conditions and leading to artificially low prices or

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prices that are not substantially the same as they would be if they were determined in a competitive market'. This claim is related to Tasman's submission that the purchase of stainless steel from SIEs is a countervailable subsidy (discussed further in Non-Confidential Appendix 5).

Tasman submits that SIEs are major suppliers of cold-rolled stainless steel to Chinese deep drawn stainless steel sink manufacturers. To support this, Tasman refers to the findings of the Specialty Steel Industry of North America's 2007 report, *Chinese Government Subsidies to Stainless Steel Industry*,⁶¹ which states:

*The Chinese stainless steel industry is largely state-owned. The Government of China owns a majority stake in numerous Chinese stainless steel producers, including two of the country's largest steel producers...*⁶²

In addition to the involvement of SIEs in the Chinese steel industry, the application highlights other areas of GOC involvement that it submits contribute to there being a market situation. In particular, the application refers to the findings of the CBSA's 2012 investigation into certain pup joints exported from China,⁶³ which Tasman notes identified that a number of GOC policies and five-year plans were 'found to have influenced the Chinese steel industry'.

To demonstrate the GOC influence on domestic stainless steel input prices, the application includes a comparison of the \$US/Tonne ex-works (EXW) domestic Chinese, Japanese and Republic of Korea (Korea) sales prices of Grade 304, 2 mm cold-rolled stainless steel sheets (which the application advises is the raw material input used in the production of deep drawn stainless sinks) in each market. This was sourced from a stainless steel market tracking report, submitted as Confidential Attachment B-4.2.1(b) of the application.

The application submits that this comparison shows that Chinese prices are at a discount of up to 10% of the prices in the Japanese (the next cheapest) market (refer to Diagram B-3.1.1.1 of the application).

The application submits that the domestic selling prices of cold-rolled stainless steel in China are 'not appropriate for the purposes of determining the fair market value of these goods' and that a reasonable substitute cost for cold-rolled stainless steel should be used in constructing normal values.

VI(ii) GOC CLAIMS

Following initiation of the investigation, the Commission wrote to the GOC outlining Tasman's market situation and steel raw materials allegations, and requesting the GOC complete a Government Questionnaire to assist the Commission's investigation into the alleged particular market situation. The Government Questionnaire also requested information from the GOC relevant to the Commission's assessment of countervailable subsidisation.

⁶¹ Non-confidential attachment C-1.1.2 of the application.

⁶² *Ibid*, at page 3.

⁶³ CBSA *Statement of Reasons concerning the making of final determinations with respect to the dumping and subsidizing of certain pup joints originating in or exported from the People's Republic of China*, 4214-31/AD/1390, 4218-30/CV/127, 27 March 2012 (Non-Confidential Attachment C-1.1.3 of the application).

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The GOC responded to the Government Questionnaire but in doing so declined to provide direct responses to the questions posed in Parts A and B, which are considered particularly relevant to the assessment of the alleged particular market situation in the Chinese deep drawn stainless steel sinks market and the assessment of the reasonableness of the cost of stainless steel incurred by Chinese exporters of the goods.

Instead, the GOC stated its general opposition to the Commission's (and its predecessor, ACBPS) approach to determining the existence of a particular market situation in China and the reasonableness of steel raw materials costs in relation to goods previously subject to anti-dumping investigations.

Following a preliminary finding in the PAD that Chinese stainless steel costs are not representative of reasonably competitive market costs, the GOC restated its position on the reasonableness of stainless steel costs in China in a submission dated 19 September 2014, submitting that:

- *China maintains a market economy and has a very competitive market for steel inputs whose prices are set by the market and not by the government and are not unduly influenced or artificially lowered by the government;*
- *neither Australian Customs nor the Commission has ever had any evidence to conclude that Chinese government policies and industry regulations have affected the costs of steel inputs to the extent that the costs cannot be regarded as market competitive prices. In its review of the HSS⁶⁴ investigation, the then Trade Measures Review Officer (TMRO) made findings in support of the GOC's position in this regard, whereas Australian Customs and the Commission have consistently chosen to ignore these findings;⁶⁵*
- *the fact that Chinese steel input prices may be lower than the prices of the same steel input in the other markets provides no basis for the conclusion that the Chinese prices are distorted or artificially lowered and do not reflect competitive market prices. Rather, it merely indicates that Chinese steel industry is more competitive and efficient than the steel industry in these other countries and that its costs to make steel are lower than in other countries. It is not acceptable under the WTO rules or Australian laws for Australia to take action to redress effects arising from the competitiveness and efficiency of Chinese industries.*

The GOC went on to submit:

Government policies and industry regulations are common and necessary in every country and are certainly legitimate and not incompatible with the operation of an undistorted market economy. Therefore, the Commission cannot conclude that the cost of stainless steel is distorted by merely relying on the existence of government policies and industry regulations in the Chinese iron and steel industry. There must

⁶⁴ Hollow structural sections

⁶⁵ The Commission understands the GOC is referring to the December 2012 TMRO review into the decision to impose anti-dumping and countervailing measures on HSS exported to Australia from China, accessible at <http://www.adreviewpanel.gov.au/site/documents/HollowStructuralSections-Report.pdf>

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be positive evidence that the GOC has in some way regulated prices and evidence as to way it has done so. No such evidence has been provided.

VI(iii) SUBMISSIONS BY OTHER INTERESTED PARTIES

In its submission of 22 July 2014, Komodo put forward its views in relation to Tasman's claims of the existence of a particular market situation in the Chinese deep drawn stainless steel sinks market, and the reasonableness of stainless steel costs incurred by Chinese exporters of the goods. This position was reiterated in a further submission dated 18 August 2014.

Komodo submitted that:

- the GOC 'cannot' influence the market through supply of stainless steel sheet by state-owned enterprises as:
 - there is a majority of private ownership in the Chinese stainless steel market; and
 - the GOC government can't intervene in the operating of Government-owned enterprises for non-economic purposes or by ways that violating the Company Law in China;
- the stainless steel market in China is a 'fully open market' as:
 - there is no tariff barrier for the import and export of stainless steel;
 - the VAT rebate rate for export of stainless steel sheet (13%) is higher than that for stainless steel sinks (9%); and
 - China exports about 1 million tons and imports about 0.5 million tons of stainless steel sheet each year, indicating the market is not isolated;
- there is 'no state policy that [may] directly affect the market price of stainless steel' – the policies identified by Tasman in its application have the objective of 'enhancing the technology and management level of steel production enterprises, maintaining market order, [and] optimizing the industry structure' and have no direct impact on market prices of stainless steel;
- no significant state purchasing of stainless steel sheet was identified in China;
- the majority of all stainless steel purchases of sinks producers in China are done on the "Spot Market"; and
- the prices at which stainless steel was sold to sinks manufactures are not 'abnormally low'.

In submitting the above, Komodo relies on the findings of ACBPS in relation to its assessment of the reasonableness of aluminium raw material prices during its dumping and subsidisation investigation into aluminium extrusions from China (REP 144) to show that not all of the elements examined in that case when determining that aluminium raw material costs were not reasonably competitive market prices apply to stainless steel in the context of this investigation.

The Commission also received a submission by GWA on 18 December 2014 in relation to the reasonableness of the Commission's proposal (as detailed in PAD 238) to use North American and European MEPS stainless steel pricing for the purposes of constructing normal values. The Commissioner considers that to have regard to this submission would have prevented the timely placement of this SEF on the public record. The submission will be considered prior to preparation of the Commissioner's final report to the Parliamentary Secretary.

VI(iv) COMMISSION'S ASSESSMENT

In light of the GOC's failure to provide direct responses to Parts A and B of the Government Questionnaire, the Commission considers that it must rely on all information reasonably available to it in order to make a preliminary assessment as to the reasonableness of exporters' incurred costs, for the purposes of this SEF.

The Commission has undertaken several recent investigations into the reasonableness of various steel raw material costs in relation to Chinese carbon steel and carbon steel-based products (including hollow structural sections (HSS), hot rolled plate steel, zinc coated steel, aluminium zinc coated steel and wind towers). In each case, the Commission found there were significant GOC interventions in the domestic steel market that rendered the steel raw material costs incurred by Chinese exporters of the subject goods not reasonably reflective of competitive market prices.

In the cases of HSS, hot rolled plate, zinc coated steel and aluminium zinc coated steel (Report (REP) Nos 177, 190, 198 and 221), the Commission found that these GOC interventions had created a market situation in relation to those products making domestic selling prices unsuitable for determining normal values under Section 269TAC(1). However, in relation to wind towers, the Commission found that insufficient relevant domestic sales exist for the purposes of determining normal values under Section 269TAC(1) using domestic selling prices in any case. This meant that a finding in relation to the existence of a particular market situation was not relevant (see REP 221).

In all cases discussed above where an assessment was made that domestic sales were not suitable for use in determining normal values under Section 269TAC(1) (either due to the existence of a market situation or the lack of relevant domestic sales), the Commission (or its predecessor, ACBPS) considered that constructed normal values under Section 269TAC(2)(c) should be used.

In each case, when constructing normal values under Section 269TAC(2)(c), the Commission found that certain steel and steel raw material costs incurred by Chinese manufacturers of investigated goods were not reasonably reflective of competitive market costs for the purposes of Regulation 180(2). The Commission then made amendments to the costs incurred by Chinese exporters of the goods to reflect reasonably competitive market costs for those inputs. These findings relied on the identification of significant GOC interventions in the domestic iron and steel industry, and how these impacted on the price of the steel raw materials subsequently replaced by the Commission.

Details of the Commission's previous findings in relation to a particular market situation and the reasonableness of Chinese steel costs are outlined in **Non-Confidential Appendix 11** of this report.

The Commission's investigation into deep drawn stainless steel sinks has established that the key raw material in the production of the goods is stainless steel coil (304 grade). This stainless steel is supplied to deep drawn stainless steel sink manufacturers either in coil or sheet form (with the sheets being pre-slit from stainless steel coils).

The Commission has undertaken research into the manufacturing process of stainless steel coil and has found significant similarities between the raw materials and manufacturing process of stainless steel, and the raw materials and manufacturing processes of hot rolled

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plate steel, steel slab and hot-rolled coil (HRC). These are the raw materials for deep drawn stainless steel sinks, aluminium zinc coated steel, galvanised steel and wind towers⁶⁶. Specifically, HRC, hot rolled plate and stainless steel coil are each manufactured from steel slab that is hot-rolled in a rolling mill to the desired thickness. The steel slabs used are made either using an electric arc furnace process (using scrap carbon steel as they key raw material) or through a fully integrated steelmaking process (using coking coal, iron ore, and scrap carbon steel as the key raw materials). Stainless steel coil, HRC and plate steel manufacturers may either produce their own slabs for later rolling or purchase them already made from a steel supplier.

The key difference between stainless steel coil and HRC or hot rolled plate steel is that the steel slabs used to make stainless steel coil contain a high level of chromium (at least 11.5 per cent) to give the steel its stainless properties, while the slabs used to make HRC and hot rolled plate steel do not have high chromium levels.

Noting the above, the Commission considers that numerous GOC policies, plans and implementing measures examined by the Commission in its previous investigations into the existence of a particular market situation and the reasonableness of Chinese steel raw materials costs are likely to extend to manufacturers of stainless steel coil, or to their upstream suppliers of steel and steel raw materials.

In addition, the Commission's previous assessments of the existence of a particular market situation and reasonableness of steel costs in relation to various Chinese steel products focussed on GOC measures relevant to the Chinese 'iron and steel industry'. The 'iron and steel industry' is the focus of the GOC's *Development Policies for the Iron and Steel Industry* (the National Steel Policy or NSP)⁶⁷, a key overarching policy document of the GOC, that includes clearly articulated policy aims for that industry that the Commission was able to link to several 'implementing measures' (see Appendix A to REP177).

This policy defines the Chinese 'iron and steel industry' as follows:

The term 'the iron and steel industry' as mentioned in the present Development Policies covers:

the selection of iron mines, manganese mines and chromium mines and working techniques and relevant supporting techniques such as agglomeration, carbonization, iron alloy, carbon products, fire-resisting materials, iron smelting, steel rolling and metal products.

This definition of the Chinese iron and steel industry is broad, and extends from raw material mining, through to steel rollers and the production of steel products themselves.

In light of this definition, the Commission considers it reasonable to find, at the very least, that manufacturers of stainless steel coil and their upstream manufacturers of steel and steel inputs are part of the iron and steel industry.

⁶⁶ The Commission's understanding of HRC and hot rolled plate steel comes from its previous investigations into deep drawn stainless steel sinks, hot rolled plate steel, aluminium zinc coated steel and galvanised steel. Information relating to the manufacturing process has been sourced from the website of Outokumpu Oyj, the world's largest stainless steel manufacturer (<http://www.outokumpu.com/en/Pages/default.aspx>).

⁶⁷ GOC response to the deep drawn stainless steel sinks Government Questionnaire, Attachment A11.

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VI(v) CONCLUSION

The Commission determines that there is sufficient evidence to find that there continues to be significant GOC influence in the Chinese iron and steel industry that either directly or indirectly impacts on the domestic market for stainless steel.

In these circumstances, the Commission considers the costs incurred by deep drawn stainless steel sinks manufacturers in China for stainless steel coil used in the investigation period do not reasonably reflect competitive market costs in terms of Regulation 180(2).

PART VII DETERMINING A REASONABLY COMPETITIVE MARKET COST SUBSTITUTE FOR STAINLESS STEEL

After determining that the cost of stainless steel (specifically stainless steel coil) incurred by Chinese exporters of the goods is not a reasonably competitive market cost for the purposes of Regulation 180(2), the Commission has sought to establish an appropriate benchmark for stainless steel, having regard to the guidelines set out in Section 269TACC(4)(d) and (5) of the Act, and Article 14(d) of the *SCM Agreement*.

There are no specific provisions in the Act or Regulations that direct how a reasonably competitive market price should be determined for costs considered to not be reasonable for the purposes of Regulation 180(2).

However, the Commission considers that, in the case of stainless steel costs incurred by Chinese exporters of the goods, it is reasonable to apply the same 'benchmark' price considered to be representative of 'adequate remuneration' for the purposes of determining a benefit under Subsidy Program 1 - Raw Materials Provided by the Government at Less than Fair Market Value.

This 'benchmark' has been established as a monthly MEPS composite price for stainless steel coil using the monthly reported MEPS North American and European prices (excluding the Asian price).

Details of this benchmark and the assessment of other possible benchmarks are detailed in Non-Confidential Appendix 5.

PART VIII ASSESSMENT OF COSTS REASONABLENESS – REVENUE FROM STAINLESS STEEL SCRAP

VIII(i) SUBMISSION BY JIABAOLU

In a submission dated 17 September 2014, Jiabaolu submitted that because the Commission had determined in PAD 238 that the stainless steel purchase prices did not reflect competitive market costs, the Commission should 'logically determine' that the scrap price has also been affected by the interventions of the GOC. Jiabaolu submitted that the actual price received for scrap should be discarded and 'the same uplift calculation' be applied to the scrap price. It is not clear from Jiabaolu's submission whether it is claiming that the scrap price should be increased by exactly the same percentage as the stainless steel purchase cost.

VIII(ii) COMMISSION'S ASSESSMENT

In the questionnaire forwarded to the GOC, the Commission sought the following information relevant to the scrap market in China:

- Import quantity by volume and value;
- Export quantity by volume and value;
- Corporate tax rate for scrap steel traders;
- Any applicable export tariff rates and/or quotas;
- Applicable VAT export rebate rates;
- In relation to the *Price Law of the People's Republic of China* (the Price Law), what "price regulation fund" regulations and "price monitoring" have applied to scrap steel since 1 July 2006; and
- Identification of any GOC initiatives or policies that affect scrap steel

As stated previously, the GOC did not respond to any of these questions.

The Commission considers the above information relevant to its understanding of the scrap steel market in China. In the absence of this or any other information the Commission has had regard to other information available to it.

On 18 October 2012, BlueScope Steel Limited (BlueScope) lodged an application for the publication of a countervailing duty notice in respect of exports of aluminium zinc coated steel and galvanised steel (collectively 'coated steel') from China. The application claimed that manufacturers of coated steel were in receipt of a subsidy by way of scrap steel purchased for less than adequate remuneration. The manufacture of coated steel requires scrap steel as an input to the steel making process, therefore in the coated steel case scrap was a cost to the manufacturers rather than a revenue item.

The scrap steel used by steel makers is called ferrous scrap whereas stainless steel scrap is a non-ferrous scrap. Notwithstanding this difference, and in the absence of better information, the Commission considers the information obtained during consideration of the countervailing application is relevant to its consideration of scrap in the case of deep drawn stainless steel sinks.

BlueScope's application stated that China is a net importer of scrap steel because demand exceeds supply. The Commission considers that this circumstance would cause domestic prices to remain high rather than be suppressed. BlueScope considered that, despite this, domestic prices for scrap steel were kept low by the GOC's imposition of an export tax on scrap steel. BlueScope provided data that it claimed showed that the Chinese price for scrap steel was lower than the US price for scrap steel.

During its pre-initiation consultations with the GOC, the GOC provided information from World Steel Dynamics⁶⁸ that showed the scrap prices for four different grades of scrap steel, as opposed to the one price provided by BlueScope in its application. This data showed that the Chinese domestic price was higher than the US price at all times for at least one grade of

⁶⁸ "World Steel Dynamics" website - [http://www.worldsteeldynamics.com/marley/Marleys%20Heavy%20Melt%20%2350.pdf/view?searchterm=world steel dynamics](http://www.worldsteeldynamics.com/marley/Marleys%20Heavy%20Melt%20%2350.pdf/view?searchterm=world%20steel%20dynamics) november 2012

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scrap steel. In response to this BlueScope advised that it had used an average US price for all grades in its comparison with Chinese prices.

In its consideration report for the application (CON 193), the Commission stated that it considered the evidence provided by BlueScope was insufficient to support there being reasonable grounds to initiate an investigation into this alleged subsidy program. The Commission's reasons were:

- the application did not provided any evidence for its statement about the predominance of Chinese government supply of scrap steel;
- the lack of a clear divergence between Chinese domestic prices and the chosen benchmark. The data showed Chinese domestic prices on average 6% below USA prices over the twelve month period. There was a wide gap between American and Chinese prices for the period November 2011 to February 2012, but a much narrower gap for the remainder of the period. In June 2012 the Chinese domestic price for scrap steel was higher than the American domestic price; and
- the information supplied by the GOC in relation to prices for different types of scrap.

VIII(iii) CONCLUSION

The GOC did not provide the Commission with the requested information in relation to the scrap steel market in China. In the absence of this information the Commission has had regard to other information available to it. The Commission is not satisfied there is sufficient positive evidence to warrant an adjustment to the scrap prices reflected in the records of Chinese manufacturers of deep drawn stainless steel sinks.

NON-CONFIDENTIAL APPENDIX 5 – ASSESSMENT OF COUNTERAVAILABILITY OF SUBSIDIES

PART I OVERVIEW

I(i) INTRODUCTION AND SUMMARY OF FINDINGS

This appendix details the Commission’s assessment of the 24 subsidy programs investigated in relation to certain deep drawn stainless steel sinks exported from China.

These include the Commission’s assessment of the eight original programs that were investigated based on information provided in Tasman’s application, and the 16 additional programs the Commission identified during the course of the investigation.

The 24 investigated programs, and the Commission’s preliminary assessment of the countervailability of each in relation to deep drawn stainless steel sinks from China, is outlined in the below table.

Program Number	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
Program 6	International Market Fund for Small and Medium-sized Export Companies	Grant	Yes
Program 7	Reduced tax rate for productive FIEs scheduled to operate for a period not less than 10 years	Income Tax	No
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

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Program Number	Program Name	Program Type	Countervailable In relation to the goods (Yes/No)
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	Income Tax	Yes
Program 24	Preferential Tax Policies for High and New Technology Enterprises	Grant	Yes

I(ii) RELEVANT LEGISLATION

Section 269T of the Act defines a ‘subsidy’ as follows:

"subsidy" , in respect of goods exported to Australia, means:

(a) a financial contribution:

(i) by a government of the country of export or country of origin of the goods; or

(ii) by a public body of that country or a public body of which that government is a member; or

(iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;

that involves:

(iv) a direct transfer of funds from that government or body; or

(v) the acceptance of liabilities, whether actual or potential, by that government or body; or

(vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or

(vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; or

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- (viii) the purchase by that government or body of goods or services; or*
- (b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;*
- if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.*

This reflects Article 1.1 of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement).

S.269TAAC defines a countervailable subsidy as follows:

(1) For the purposes of this Part, a subsidy is a countervailable subsidy if it is specific.

(2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:

(a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or

(b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or

(c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or

(d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.

(3) Subject to subsection (4), a subsidy is not specific if access to the subsidy:

(a) is established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and

(b) those criteria or conditions do not favour particular enterprises over others and are economic in nature; and

(c) those criteria or conditions are strictly adhered to in the administration of the subsidy.

(4) Despite the fact that access to a subsidy is established by objective criteria, the Minister may, having regard to:

(a) the fact that the subsidy program benefits a limited number of particular enterprises; or

(b) the fact that the subsidy program predominantly benefits particular enterprises; or

(c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or

(d) the manner in which a discretion to grant access to the subsidy has been exercised;

determine that the subsidy is specific.

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Section 269TACC of the Act directs how it is to be determined whether benefits have been conferred by a subsidy and the amount of this benefit.

Under Section 269TJ of the Act, one of the matters that the Minister must be satisfied of to publish a countervailing duty notice is that a countervailable subsidy has been received in respect of the goods.

PART II INFORMATION CONSIDERED BY THE COMMISSION

II(i) TASMAN'S APPLICATION

The Commission has relied upon information submitted by Tasman in its application with respect to its investigation of the eight original countervailable subsidy programs (Programs 1 – 8) that Tasman alleged were received by Chinese exporters of deep drawn stainless steel sinks exported to Australia.

In support of these allegations, Tasman referenced:

- the final determination of the Canada Border Services Agency (CBSA) in various 2012 subsidy investigation in respect of certain stainless steel sinks from China;
- a Specialty Steel Industry of North America report released April 2007 into “Chinese Government Subsidies to Stainless Steel Industry”;
- CBSA’s final determination from its 2012 investigation concerning certain pup joints from China;
- analysis of relevant Chinese legislation and decrees, including:
 - *Law of the People's Republic of China on Enterprise Income Tax (2007)*;
 - *Law of State-Owned Assets of the Enterprises*;
 - *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise*; and
 - *Decree of the State Council of the People's Republic of China No. 378 – Interim Relations on Supervision and Management of State-owned Assets of Enterprises*;
- analysis of stainless steel price data by MEPS International and Metal Bulletin Research;
- analysis of New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures of China dated 21 October 2011 (WTO Notification); and
- the Canadian International Trade Tribunal’s determinations, including those relating to subsidisation of galvanised steel wire originating in or exported from China, and the dumping and subsidizing of steel piling pipe originating in or exported from China.

II(ii) INFORMATION PROVIDED BY EXPORTERS

The Commission has relied upon information provided by exporters in assessing the alleged subsidy programs. This includes information provided by selected exporters in the Exporter Questionnaire responses, as well as information provided by exporters during verification visits.

II(iii) INFORMATION PROVIDED BY THE GOVERNMENT OF CHINA

The Commission included questions relating to each program in a Government Questionnaire that was sent to the GOC on 31 March 2014.

A response to the Government Questionnaire was received from the GOC on 19 May 2014, which contained information pertaining to the questions raised in Section B – Market Situation, and Section C – subsidies.

The GOC did not complete Section A – General Questions, which sought GOC advice on the details of all Chinese producers and/or exporters of deep drawn stainless steel sinks destined for Australia during the investigation period that applied for, accrued, or received benefits under the eight original programs.

The GOC also submitted supporting documentation with the Government Questionnaire, including:

- Law of the People's Republic of China on Promotion of Small and Medium-sized Enterprises (Order of the President No.69);
- Circular of the General Office of the State Council on Issuing the Interim Provisions of the Ministry of Science and Technology and the Ministry of Financial and Technological Innovation Funds of Science and Technology-oriented Small and Medium-Sized Enterprises (State Council 1999 Circular 47);
- Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax (State Council 2007 Circular 39); and
- Regulations of the People's Republic of China on the Implementation of the Enterprise Income Tax Law.

Upon identifying additional potentially countervailable subsidy programs during investigations with exporters, the Commission sent the GOC a Supplementary Government Questionnaire on 22 August 2014 and an addendum to the Supplementary Government Questionnaire on 26 August 2014. The GOC provided a response to the Supplementary Government Questionnaire and addendum on 19 September 2014.

The GOC provided a response to the Supplementary Government Questionnaire and related submission. This did not directly address the program-specific questions posed by the Commission but rather argued the legality of the Commission initiating investigations into programs not applied against by the Australian industry. The Commission's assessment of the GOC's claim in this regard is at Section 7.3 of this SEF.

The GOC did not cooperate with the Commission's request for detailed information about the programs identified in the Supplementary Government Questionnaire or addendum.

II(iv) OTHER INFORMATION CONSIDERED AS PART OF THIS ASSESSMENT

The Commission also considered as part of this assessment:

- Information submitted by interested parties in various general submissions to the investigation;

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- information submitted to various previous ACBPS and Commission investigations into the alleged subsidisation of various goods exported from China;
- the findings from the CBSA in relation to its investigations into the subsidisation of deep drawn stainless steel sinks exported to Canada (discussed within Tasman's application and referenced earlier); and
- other relevant information obtained by the Commission during independent research into matters relevant to determining subsidisation in China.

PART III ASSESSMENT OF SUBSIDY PROGRAMS – CATEGORY ONE: PROVISION OF GOODS

III(i) PROGRAM 1: RAW MATERIALS PROVIDED BY THE GOVERNMENT AT LESS THAN FAIR MARKET VALUE

BACKGROUND

Tasman's application alleged that during the Investigation Period, Chinese exporters of the goods benefited from the provision of raw materials in the form of 304-grade cold rolled stainless steel coil (hereafter referred to as 'stainless steel coil') by the GOC at less than adequate remuneration.

In particular, it was claimed that stainless steel, the main raw material used in the manufacture of deep drawn stainless steel sinks, was being produced and supplied by GOC-owned (or partially-owned) enterprises in China at less than adequate remuneration. For the purposes of this report, these GOC-owned or partially owned entities will be referred to as 'state-invested enterprises (SIEs).

The definition of a subsidy under s.269T(a)(ii) includes reference to 'a financial contribution by a government or any public body'.

The application alleges that Chinese SIEs that produce stainless steel coil are public bodies, and that a financial contribution in the form of provision of raw material inputs at less than adequate remuneration by these SIEs to deep drawn stainless steel sink producers constitutes a countervailable subsidy.

The Commission's assessment of whether SIEs producing stainless steel coil constitute a public body in the meaning of s.269T(a)(ii) is discussed below.

Under this program, a benefit to exported deep drawn stainless steel sinks is conferred by stainless steel coil being provided by the GOC (through SIEs) at an amount reflecting less than adequate remuneration, having regard to prevailing market conditions in China.

The Commission's assessment of what constitutes 'adequate remuneration' for stainless steel coil in China is outlined in 0 of this appendix.

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The Commission requested information from Chinese exporters in relation to their purchases of stainless steel coil during the investigation period. For each supplier of stainless steel coil, the Chinese exporters were required to identify whether the supplier was a trader or manufacturer of the goods. Where the supplier was not the manufacturer of the goods, each exporter was asked to identify the manufacturer.

As well as identifying the manufacturers of all purchased stainless steel coil, the exporters were also asked to indicate whether these enterprises were SIEs.

LEGAL BASIS

The Commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

WTO NOTIFICATION

The Commission is not aware of any WTO notification of this program.

ELIGIBILITY CRITERIA

There are no articulated eligibility criteria for enterprises receiving stainless steel coil at less than adequate remuneration.

IS THERE A SUBSIDY?

Financial contribution

Based on the information above, the Commission considers that this program involves a financial contribution that involves the provision of goods, at less than adequate remuneration.

By a government or public body?

Introduction

In order for this program to be considered to be a 'subsidy' the financial contribution noted above must be from a government, public body, or private body entrusted with governmental functions (see above).

In its application Tasman stated that SIEs are public bodies (for the purposes of s.269T), as was found by the CBSA in its investigation into stainless steel sinks with reference to earlier CBSA findings in relation to certain pup joints from China, which noted:

- there are numerous GOC industrial policies that affect the Chinese steel sector, and manufacturers of cold-rolled stainless steel;
- SIEs are legally required to comply with these policies and hence are performing governmental functions; and
- the GOC exercises meaningful control over SIEs through:
 - determining eligibility for directorship of these enterprises;
 - appointing and removing top executives of SIEs; and

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- the role of the State-owned Assets Supervision and Administration Commission of the State Council (SASAC), which has the power to ‘take charge of the daily management’ of supervisory panels of SIEs and draft laws and administrative regulations that impact SIEs.

The Commission requested exporters in their questionnaire responses to provide a list of all purchases of stainless steel during the investigation period. Only one of the selected exporters, Zhuhai Grand, reported purchasing stainless steel from a SIE. This SIE is Guangdong Metals and Minerals Import & Export Co., Ltd (Guangdong Metals). At the visit Zhuhai Grand advised that Guangdong Metals was its majority shareholder (70.7%). Guangdong Metals is 100% owned by Guanxing Holding Group, which is itself 100% owned by SASAC.

Previous consideration

The term ‘public body’ is not defined in the legislation or the SCM Agreement. It has been considered by the Commission in previous investigations and has been the subject of a number of WTO Appellate Body findings. To inform the Commission’s assessment of this issue in the present investigation the following documents are considered to be relevant:

- REP 177 – the Commission’s finding in relation to the subsidisation of hollow structural sections (HSS) exported from China;
- REP 203 – the Commission’s reinvestigation of certain findings in REP 177, one of which was whether SIEs that supplied hot rolled coil (HRC) to manufacturers of HSS were public bodies;
- REP 193 – the Commission’s findings in relation to the subsidisation of aluminium zinc coated steel and galvanised steel (collectively ‘coated steel’) exported from China. The Commission found that SIEs that supplied hot rolled coil (HRC) to manufacturers of coated steel were public bodies;
- ADRP Report (15 November 2013) in relation to REP 193 – the ADRP disagreed with the Commission’s finding that SIE HRC suppliers were public bodies. The Parliamentary Secretary accepted the ADRP’s finding in relation to this issue;
- *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* (DS379) – this Appellate Body finding considered the meaning of ‘public body’ in accordance with Article 1.1(a)(1) of the SCM Agreement. This report is considered to be one of the most definitive references to date on the matter of public bodies;
- *United States – Carbon Steel (India)* (DS 436) – this WTO Panel finding further considered the requirements for finding an entity to be a public body; and
- *United States – Countervailing Measures (China)* (DS437) – this dispute involved a number of decisions of the US in relation to multiple investigations and again considered the factors that determine whether an entity is a public body.

In relation to the latter document, DS437, while this decision is recent the Commission considers it of less relevance to the present investigation. In the US investigations considered by the Panel in DS437, the US determined that the relevant input suppliers were public bodies on the grounds that these suppliers were majority-owned or otherwise controlled by the GOC. The Commission agrees with the views of the Panel in this dispute, and the Appellate Body in DS379, that majority ownership of itself does not lead to a conclusion that an entity is a public body. The Commission does not advocate such an approach in the present investigation.

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In DS379 the Appellate Body provided guidance as to how it can be ascertained that an entity exercises, or is vested with government authority, outlining the following indicia that may help assess whether an entity is a public body (vested with or exercising governmental authority):⁶⁹

- **Indicia 1** - where a *statute or other legal instrument* expressly vests government authority in the entity concerned;
- **Indicia 2** - where there is evidence that an entity is, *in fact, exercising governmental functions* may serve as evidence that it possesses or has been vested with governmental authority; and
- **Indicia 3** - where there is evidence that a government exercises *meaningful control* over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions.

The Commission, and more recently the ADRP, have used these indicia as the basis for its approach to determining decisions regarding whether entities subject to dumping and countervailing investigations should be considered to be public bodies.

Decisions of the Commission

In REP 177 the Commission assessed whether SIE suppliers of HRC were public bodies according to each of the three indicia. The Commission concluded that Indicia 1 was not met, however evidence exists to show that both Indicia 2 (evidence that an entity is, in fact, exercising governmental functions) and Indicia 3 (evidence that a government exercises meaningful control over an entity and its conduct) are satisfied in relation to Chinese HRC and/or narrow strip manufacturers. This conclusion was based on an assessment of a number of factors including policy documents issued by the GOC and statements by SIE steel manufacturers in public reports. The Commission considered that the evidence 'show(ed) that these entities are still constrained by, and abiding by, multiple GOC policies, plans and measures, and in some circumstances acting as an important means by which these GOC policies and plans are implemented.'

The Commission's finding was appealed to the Trade Measures Review Officer (TMRO), who directed the Commission to conduct a reinvestigation of the public body finding. The Commission's reinvestigation report, REP 203, affirmed the findings in REP 177. It considered that 'SIEs are exercising government functions and that there is evidence that the government exercises meaningful control over SIEs and their conduct. In performing government functions, SIEs are controlling third parties.'

In REP 193, relating to coated steel, the Commission relied on its findings in REP 203 to find that SIE suppliers of HRC were public bodies. The GOC appealed this finding to the ADRP. In disagreeing with the Commission's finding, the ADRP made the following observations:

- Active compliance with governmental policies and/or regulation does not equate to the exercise of governmental functions or authority;

⁶⁹ Appellate Body report DS379 at [318]

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- In concluding that certain companies were actively implementing objectives in the five-year plans the Commission conflated the purpose of acting in accordance with a government policy and carrying out government functions;
- Article 14 of the Interim Measures, which vests SASAC with certain obligations in respect of the economy, is a reference to SASAC and not to the SIEs. It does not evidence how, or if, there is authority delegated to SIEs to control participants in the iron and steel industry;
- Having an impact on other participants in the industry is not indirectly controlling them and is not evidence of the exercise of governmental authority; and
- There is no material which demonstrates that there has been a delegation (noting this is not necessarily in the strict sense of delegation) of governmental authority to SIEs to impose state-mandated policies on participants in the iron and steel industry.

Commission's consideration

The Commission considers that the ADRP's decision to direct a reinvestigation of the findings in REP 177 was, to a large extent, premised on the TMRO's view that there needs to be the essential element of exercising a power of government over third persons. This view was in turn likely influenced by the words of the Appellate Body in DS379, 'that the term "government" is defined as the "continuous exercise of authority over subjects; authoritative direction or regulation and control".'

The Panel considered this issue in DS437, a decision that was handed down after the ADRP's report in relation to coated steel. The Panel stated in its report that '(it) was not persuaded by China's argument that... "[a] public body, like government in the narrow sense, thus must itself possess the authority to 'regulate, control, supervise or restrain' the conduct of others".' The Appellate Body's view was that this was not supported by the findings in DS379. It stated that:

'In our view, governments, either directly themselves or through entities that are established, owned, controlled, managed, run or funded by the government, commonly exercise or conduct many functions or responsibilities that go beyond "the effective power to 'regulate', 'control', or 'supervise' individuals, or otherwise 'restrain' their conduct".'

The Commission considers that while it was relevant for the ADRP to consider this element in the context of the coated steel case, the ability to control others is of itself not decisive in determining whether an entity possesses, exercises or is vested with government authority.

In DS436, also released after the ADRP's findings, the WTO DSB further considered the issue of whether a government exercises 'meaningful control' over an entity. The Panel stated that 'to determine whether an entity has governmental authority, an investigating authority must evaluate the core features of the entity and its relationship to government. Governmental control of the entity is relevant if that control is "meaningful".'

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In DS436 the US argued that in addition to the Government of India's (GOI's) majority shareholding in the relevant entity (the NMDC)⁷⁰, there was evidence demonstrating that the GOI was involved in the selection of directors of NMDC and that NMDC's website stated that it was under the 'administrative control' of the GOI. The US referred to a previous administrative review of the same commodity wherein it was found that the GOI had appointed two directors and had approval power over an additional seven out of 13 directors.

The DSB stated that, in its view:

- 'government involvement in the appointment of an entity's directors (involving both nomination and direct appointment) is extremely relevant to the issue of whether that entity is meaningfully controlled by the government';
- 'while a government shareholding indicates that there are formal links between the government and the relevant entity, government involvement in the appointment of individuals – including serving government officials – to the governing board of an entity suggests that the links between the government and the entity are more substantive, or "meaningful", in nature'; and
- 'in the context of government ownership and government involvement in the appointment of directors, such evidence provides additional support for a finding that an entity is under the "meaningful" control of the government.'

The DSB rejected India's claim that the US' finding that NMDC is a public body is inconsistent with Article 1.1(a)(1) of the SCM Agreement.

In the present investigation the entity that supplied stainless steel to Zhuhai Grand, Guangdong Metals, is 100% owned by Guanxing Holding Group, which is itself 100% owned by SASAC.

The *Interim Regulations on Supervision and Management of State-Owned Assets of Enterprises* (Interim Regulations) set out the functions and obligations of a state-owned assets supervision and administration authority. Relevant provisions are as follows:

- Article 13 states that one of the main responsibilities is to 'appoint or remove the responsible persons of the invested enterprise';
- Article 16 states that a state-owned assets supervision and administration authority 'shall establish and improve the mechanism for selecting and appointing the responsible persons or enterprises';
- Article 17 describes the positions presumably considered to be 'responsible persons', which include the general manager, deputy general manager, chief accountant, chairman, vice-chairman and director of the board;

⁷⁰ The GOI held 98% of the shares of the NMDC

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- Article 17 also states that where the State Council or any level of government ‘provide otherwise’ in relation to the appointment or removal of responsible persons then those decisions prevail;
- Article 18 states that a state-owned assets supervision and administration authority shall establish a performance evaluation system and conduct annual performance reviews of responsible persons; and
- Article 19 states that a state-owned assets supervision and administration authority shall determine the remuneration of responsible persons of wholly state-owned enterprises.

The Commission is not in possession of evidence as to whether SASAC has appointed directors or other key management positions to either Guanxing Holding Group and/or Guangdong Metals. As part of the GQ, the GOC was requested to respond to a number of questions concerning entities that produce cold-rolled stainless steel:

- a list of all manufacturers of stainless steel coil and the percentage of GOC ownership in each (A6);
- whether there is GOC representation in the business, and if so the type of representation (e.g. on the Board of Directors), the authority responsible, and an indication of any special rights provided to the representative (e.g. veto rights) (A6);
- for each business where the GOC is a shareholder and/or there is GOC representations in the business provide the complete organisational structure, including subsidiaries and associated businesses and copies of annual reports of the business for the last 2 years (A6);
- confirm whether the ‘*Law of the People’s Republic of China on State-Owned Assets of Enterprises*’ is current and has not been superseded or supplemented by other laws and if so provide any superseding or supplementary laws (C2).

The GOC did not provide a response to these questions. In the absence of this information the Commission has had regard to other relevant information that is in possession of, namely the Interim Regulations, and considers that the provisions are evidence of a closer link between the GOC and Guangdong Metals than mere ownership and are evidence of ‘meaningful control’ over Guangdong Metals.

The Commission observes that the GOC submitted during INV 177 that the current law, as outlined in Article 7 of the Interim Regulations, prevents SASAC from exercising any government functions of administrative public affairs. Article 7 states:

People’s governments at all levels shall strictly abide by the laws and regulations on State-owned assets management, persist in the separation of government functions of social and public administration from the functions of investor of State-owned assets, persist in the separation of government functions from enterprise management and separation of ownership from management.

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The State-owned assets supervision and administration authority shall not perform the functions of social and public administration assumed by the government. Other institutions and departments under the government shall not perform the responsibilities of investor of State-owned assets of enterprises.

The Commission does not consider this Article to be at odds with a finding that Guangdong Metals is a public body. The Appellate Body in DS379 stated that an entity may possess certain features suggesting it is a public body and others that suggest that it is a private body. In DS436 the GOI argued that the NMDC enjoyed a significant amount of autonomy from the GOI, which was granted “to make the public sector more efficient and competitive”. These are similar sentiments to those expressed by the GOC in the Commission’s previous considerations of public bodies. The DSB in DS436 stated that ‘(s)o long as public sector enterprises are involved, we are not persuaded that the grant of a greater degree of autonomy is necessarily at odds with a determination that such public sector enterprises constitute public bodies.’

Conclusion

The Appellate Body in DS379 observed that in some cases the features of an entity may be mixed and the challenge of determining whether an entity is a public body may be complex. It stated that authorities ‘are called upon to engage in a careful evaluation of the entity in question’ and ‘give due consideration to all relevant characteristics of the entity and...avoid focusing exclusively or unduly on any single characteristic without affording due consideration to others that may be relevant.’

The Commission has not relied solely on the fact that Guangdong Metals is 100% owned by SASAC in its assessment but looked to guidance materials that set out the functions of SASAC in its role as shareholder. The Commission considers that these functions, such as the power to appoint persons to key management positions, evidence a greater role in the management of enterprises than mere shareholder. In the absence of further evidence requested of the GOC the Commission considers this sufficient information to determine that the GOC exercises meaningful control over Guangdong Metals and this serves as evidence that the relevant entity possesses governmental authority and is therefore a public body.

Conferral of benefit on the goods

As Chinese exporters use stainless steel coil in their production of deep drawn stainless steel sinks, it is considered this financial contribution is made in respect of the production, manufacture or export of the goods.

Where the financial contribution involves a direct transaction between the public bodies and the exporters of the goods, the Commission considers that this financial contribution confers a direct benefit to the extent that the goods were provided at less than adequate remuneration, as determined by the Commission.

These benefit amounts are equal to the amount of the difference between the purchase price and the adequate remuneration.

Where exporters of the goods during the investigation period received a financial contribution of stainless steel coil under the program at less than adequate remuneration, it would therefore

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confer a benefit in relation to the goods, and the financial contribution would meet the definition of a subsidy under s.269T.

The GOC asserts in its response to the Government Questionnaire that, in order to show that this program has conferred benefits on the goods, the Commission must show that the benefit received under this program ‘passes through’ to domestic sales of deep drawn stainless steel sinks, and to what extent.

The GOC refers to the Appellate Body’s findings in the WTO dispute *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada* (DS257 dispute) to highlight this assertion, asserting that this finding requires that WTO members:

- must establish “whether, and in what amount, subsidies bestowed on the producer of the input flowed through, downstream, to the producer of the product processed from that input”; and
- “must not impose duties to offset an amount of the input subsidy that has not passed through to the countervailed processed products” (at paragraph 141).

The Commission observes that it does not consider that ‘pass through’ analysis is relevant in this case, as the purchase of the stainless steel coil that the Commission considers confers a benefit on the goods are direct purchases of those inputs by manufacturers of the goods from SIEs that supply the stainless steel coil. This would necessarily confer direct benefit on the goods which are then manufactured from the stainless steel coil.

IS THE SUBSIDY A COUNTERAVAILABLE SUBSIDY (SPECIFIC OR PROHIBITED)?

As provided for in s.269TAAC(4)(a), the Parliamentary Secretary may determine that a subsidy is specific, having regard to the fact that the subsidy program benefits a limited number of particular enterprises.

Given that stainless steel coil is a key input in the manufacture of downstream products (including deep drawn stainless steel sinks) it is clear that only enterprises engaged in the manufacture of these products would benefit from the provision of the input by the GOC at less than adequate remuneration.

For this reason the subsidy is determined to be specific.

AMOUNT OF SUBSIDY IN RESPECT OF THE GOODS

Selected exporters

The Commission found that one of the three selected exporters received a financial contribution that conferred a benefit under this program during the investigation period, in accordance with s.269TACC(3)(d) of the Act.

In accordance with s.269TACC(4), the adequacy of remuneration was determined by reference to a ‘benchmark’ for adequate remuneration, established having regard to the prevailing market conditions in China (discussed in detail in Part VI of this appendix).

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In accordance with s.269TACD(1), the amount of the subsidy has been determined as the difference between adequate remuneration (as established) and the actual purchase price paid for stainless steel coil incurred by the selected exporters in purchasing these goods from SIEs.

In accordance with s.269TACD(2), the amount of subsidy received in respect of deep drawn stainless steel sinks has been apportioned to each unit of the goods using the total sales volume of sinks (stainless steel and/or deep drawn, which both use the raw material in their manufacture).

Residual exporters

Residual exporters have been attributed the same rate of per unit subsidisation determined above for the one selected exporter who received this program.

This was then calculated as a percentage of subsidisation by attributing this per unit amount over the weighted average export price of the three selected exporters.

Uncooperative and all other exporters

For the uncooperative and all other exporters, no information was provided by either the GOC or the individual exporters themselves to identify whether a financial contribution has been received under this program. The Commission considers that these entities have not given the Commissioner information considered to be relevant to the investigation within a reasonable period.

Pursuant to Sections 269TAACA(1)(c) and 269TAACA(1)(d) the Commissioner has acted on the basis of all the facts available and made reasonable assumptions in order to determine whether a countervailable subsidy has been received in respect of the goods.

Considering the fact that:

- all deep drawn stainless steel sinks exported from China are made using stainless steel coil; and
- one selected exporter purchased a significant amount of stainless steel coil from SIEs during the investigation period;

it is considered likely that uncooperative and all other exporters purchased stainless steel coil from SIEs and therefore received a financial contribution under this program.

In the absence of information that demonstrates the volume of stainless steel coil purchased from SIEs by selected uncooperative and all other exporters, in accordance with s.269TACD(1), the Commission determines that uncooperative and all other exporters would have had benefits conferred to them under this program by this financial contribution, and has calculated the amount of subsidy attributable to that benefit by reference to the subsidy rate of the selected exporter that received this program (in the absence of other reliable information).

SUBMISSIONS FROM INTERESTED PARTIES IN RELATION TO PROGRAM 1

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In a submission dated 3 November 2014, Zhuhai Grand submitted that the Commission has 'failed to demonstrate that the purchase of cold-rolled stainless steel from the parent company [an SIE] constitute[s] a subsidy'.

Zhuhai grand notes that the Commission has found that only purchases of stainless steel coil from SIEs are countervailable subsidies (and not purchases from non-SIEs because these cannot be considered to be subsidies as they are not provided by the GOC or a public body). Zhuhai Grand relies on analysis that demonstrates that purchases from that SIE supplier were more expensive than purchases from non-SIE companies, and submits that, as a result, no benefit is conferred by the transaction and hence no subsidy exists.

The Commission notes that the adequacy of remuneration used to determine whether a benefit has been conferred by the purchase of cold-rolled coil from SIEs has been established not by reference to prices of cold-rolled stainless steel charged by non-SIE entities in China, but rather by reference to an external benchmark price after finding that private prices in China are not suitable for determining adequate remuneration. The details of this assessment and the benchmark are disused in Part VI of this appendix.

The Commission has compared this adequate remuneration benchmark to the prices paid by Zhuhai Grand to the SIE in purchasing cold-rolled stainless steel and has determined that these purchases did confer a benefit, being lower than the established adequate remuneration benchmark.

The Commission therefore considers that it has adequately established that Program 1 is a countervailable subsidy received in respect of the goods (other elements of making this determination are discussed above).

PART IV ASSESSMENT OF SUBSIDY PROGRAMS – CATEGORY TWO: PREFERENTIAL TAX POLICIES

Three preferential taxation programs were investigated by the Commission. The Commission’s assessment as to whether these three programs are countervailable subsidies in respect of deep drawn stainless steel sinks, and the rate of subsidisation under these programs, is contained in the below table.

*Note: programs marked with * in the below table were not amongst the eight programs that the Commission originally initiated investigations into, but have been investigated following additional information gathered by the Commission during its investigation.*

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
Program 7 - Reduced tax rate for productive FIEs scheduled to operate for a period not less than 10 years	<p>In its application Tasman alleged that:</p> <p>During the Investigation Period, all exporters which were Foreign Invested Enterprises (FIEs) have received a reduction/exemption in tax liability....</p> <p>This program was established in order to encourage foreign investment...</p> <p>The Australian Industry submits that this program constitutes a financial contribution, namely amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption....</p>	<p>The GOC submitted in its response to the GQ that the:</p> <p>...alleged program does not exist anymore as the relevant law, i.e. the Income Tax Law of the People’s Republic of China for Enterprises with Foreign Investment and Foreign Enterprise 1991, which granted the subsidy has been repealed and superseded by the Enterprise Income Tax Law of the People’s Republic of China 2008....</p> <p>The Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax 2007...clearly provides that “enterprises enjoying the preferential policies in respect of enterprise income tax under the former tax law, administrative regulations and documents with the effects of administrative regulations shall be subject to a transition” by which at</p>	<p>Eligible production-oriented enterprises with foreign investment were eligible to benefit under this program.</p>	<p>The GOC has provided persuasive evidence to indicate that this program no longer exists.</p> <p>The Commission is not in possession of evidence to suggest that this program was operable during its investigation period (noting that none of the three selected exporters received benefits under this program).</p> <p>The Commission considers the available evidence indicates that this program was not an operable subsidy in respect of deep drawn stainless steel sinks exported from China.</p>	<p>Not applicable – not an operable subsidy program.</p>	<p>Not applicable – not an operable subsidy program.</p>

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Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
	<p>The Commission (or its predecessor, ACBPS) has previously determined that this program was a countervailable subsidy, as referenced in the Commission's subsidy register (accessible at http://www.adcommission.gov.au/reference-material/subsidies-register.asp).</p>	<p>the end of 2012 they will be subject to the normal tax rate of 25%.</p>				
<p>Program 8 - Tax preference available to companies that operate at a small profit</p>	<p>The Australian industry submits that this program constitutes a financial contribution, namely that it constitutes amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption...</p> <p>In response to the GQ, the GOC acknowledged the existence of this program, outlining that:</p> <p>The objective of the program is to reduce the burden of the enterprises making little profits and to maintain job opportunities. The program was established in 2008 and is currently in operation.</p> <p>...Qualified enterprises may be entitled to a concessional income tax rate of 20% while the normal rate is 25%.</p> <p>To its knowledge, the Commission has not investigated this program in</p>	<p>The GOC's response to the GQ cited the following legal basis for this program:</p> <ul style="list-style-type: none"> • Enterprise Income Tax Law of the People's Republic of China 2008; and • Regulations of the People's Republic of China on the Implementation of the Enterprise Income Tax Law 2008. <p>The GOC submitted that the program is administered by the Ministry of Finance and State Administration of Taxation.</p>	<p>The GOC submitted in its GQ response that the program is available to 'qualified enterprises', with the following characteristics:</p> <ul style="list-style-type: none"> • industrial enterprises, whose annual taxable income does not exceed RMB 300,000, the number of employees does not exceed 100 persons, and the total amount of assets does not exceed RMB 30,000,000; and • other enterprises, whose annual taxable income does not exceed RMB 300,000, the 	<p>The reduction in corporate income tax provided under this program is a financial contribution by the GOC which involves the forgoing of corporate income tax revenue otherwise due to the GOC.</p> <p>Due to the nature of this program (exemption from corporate income tax), it is considered that any financial contribution received under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including deep drawn stainless steel sinks).</p> <p>Where received, financial contribution is considered to confer a benefit to recipient manufacturers of deep drawn stainless steel sinks because of the reduced tax liability owed to the GOC.</p> <p>Where exporters of deep drawn stainless steel sinks during the investigation period received tax savings under the program it would therefore confer a benefit in relation to the goods, and the financial contribution would meet the definition of a subsidy under s.269T.</p>	<p>In accordance with the eligibility criteria, this program is limited to 'qualified enterprises'.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to s.269TAAC(3).</p> <p>For these reasons the subsidy is specific.</p>	<p><u>Selected exporters</u></p> <p>No rate applied. The Commission did not observe any evidence to show any of the three selected exporters received the subsidy.</p> <p><u>Residual exporters</u></p> <p>No rate applied. As the Commission is basing its findings as to the subsidisation of the goods exported by residual exporters on the rate of subsidisation received by the three selected exporters, it has not attributed any rate of subsidisation under this program to residual exporters.</p> <p><u>All other exporters</u></p> <p>No rate applied.</p> <p>While the GOC has provided evidence to demonstrate that the amount of subsidisation related to this program is a reduction in corporate income tax from 25% to 20%, the Commission notes that Program 24 effectively reduces the applicable rate of corporate income tax to 15% (a larger reduction than Program 8).</p>

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Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
	<p>previous investigations.</p> <p>WTO notification</p> <p>According to the applicant, the “ongoing nature of this program is evidenced in the New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures of China dated 21 October 2011 (refer NON-CONFIDENTIAL ATTACHMENT C-1.2.1).”</p>		<p>number of employees does not exceed 80 persons, and the total amount of assets does not exceed RMB 10,000,000.</p>	<p>No selected exporters in the Commission’s investigation reported receiving benefits under this program.</p> <p>However, considering:</p> <ul style="list-style-type: none"> • the existence of positive evidence of receipt of this program by an exporter of deep drawn stainless steel sinks to Canada; • the number of exporters of deep drawn stainless steel sinks to Australia; and • the considerable overlap between Australian and Canadian exporters observed both with selected exports and within ACBPS import data <p>it is reasonable to determine that exporters of the goods to Australia would have been in receipt of this subsidy program.</p>		<p>Program 24 has been attributed to uncooperative and all other exporters of the goods and hence any benefit received under this program would be absorbed into the calculation of benefit under Program 24.</p>

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Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
<p>Program 24 - Preferential Tax Policies for High and New Technology Enterprises*</p>	<p>One selected exporter submitted that it had benefited from a preferential tax policy for high and new technology enterprises.</p> <p>This program was not included in the note for file regarding the SGQ sent to the GOC, though it was included in an addendum to the SGQ sent to the GOC on 26 August 2014.</p> <p>The Commission has previously determined that this program is a countervailable subsidy, as referenced in the Commission's subsidy register (accessible at http://www.adcommission.gov.au/reference-material/subsidies-register.asp).</p> <p>WTO Notification</p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>This program is provided for in Article 28 of the PRC Enterprise Income Tax Law 2007, which states that:</p> <p style="padding-left: 20px;">With respect to a high and new technology enterprise that needs key support by the State, the tax levied on its income shall be reduced at a rate of 15 per cent.</p> <p>It is considered likely that this program is a national program, administered by the GOC's State Administration of Taxation.</p>	<p>According to the EQ of the recipient exporter, companies recognised by the GOC as a high and new technology enterprise are eligible for this program.</p> <p>To be recognised as a high and new technology enterprise, companies must meet certain criteria, submit an application, alongside copies of the company's business registration and other relevant documentation, and have the application approved by relevant authorities.</p>	<p>The law governing this program mandates a financial contribution by the GOC, which involves the foregoing, or non-collection, of revenue (corporate income tax) due to the GOC.</p> <p>Due to the nature of this program (general exemption on income tax regardless of what activities generate this income (profit)), a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise.</p> <p>Where received, this financial contribution is considered to confer a benefit because of the tax savings realised.</p> <p>Where exporters of deep drawn stainless steel sinks during the investigation period received tax savings under the program it would therefore confer a benefit in relation to the goods, and the financial contribution would meet the definition of a subsidy under s.269T.</p> <p>The Commission's finding that a selected exporter received benefits under this program is direct evidence of its being received in respect of the goods</p>	<p>The eligibility criterion of this subsidy limits it to enterprises that are considered high and/or new technology enterprises.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to s.269TAAC(3).</p> <p>For these reasons the subsidy is specific.</p>	<p><u>Selected exporters</u></p> <p>A subsidy rate will be applied to the selected exporter found to have benefited from this program.</p> <p>In accordance with s.269TACD(1) the amount of subsidy is determined to be the amount of tax revenue forgone by the GOC.</p> <p>In accordance with s.269TACD(2), the total amount of subsidy received by the selected exporter has been apportioned to each unit of the goods using that exporter's total sales volume⁷¹.</p> <p>This per unit amount was then calculated as a proportion of that exporter's weighted average export price, to determine a subsidisation rate⁷².</p> <p>The two other selected exporters (who did not receive this program) will receive a zero subsidy rate for this program.</p> <p><u>Residual exporters</u></p> <p>Residual exporters have been attributed the same rate of per unit subsidisation determined above for the selected exporter who received this program.</p> <p>This was then calculated as a percentage of subsidisation by</p>

⁷¹ In accordance with Section 269TACD(1), the amount of that benefit is taken to be equal to the sum granted.

⁷² This approach differs to that taken in the relevant Exporter Visit Report, in which a unit subsidisation amount was determined by reference to total sales revenue. It is considered that the approach of using sales volume is more appropriate in the circumstances.

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Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
						<p>attributing this per unit amount over the weighted average export price of the three selected exporters.</p> <p><u>All other exporters</u></p> <p>As neither the GOC nor uncooperative exporters provided information as to whether benefits were conferred on exporters under this program, all relevant information has been considered⁷³ to conclude that all other exporters had benefits conferred to them under this program during the investigation period in the form of a reduced taxation rate of 15%.</p> <p>The applicable subsidy rate for all other exporters was calculated on the assumption that they had been in receipt of this program (i.e. the quantum of taxation that would have been foregone in relation to each exporter had those exporters received this program).</p> <p>To determine this, the Commission:</p> <ul style="list-style-type: none"> • calculated the per unit rate of subsidisation that would have been applicable to all of the three selected exporters if they had received this program (in the same manner described for selected exporters above); • attributed the highest per unit subsidy amount for this program of the selected exporters to all uncooperative and all other

⁷³ Pursuant to Sections 269TAACA(1)(c) and 269TAACA(1)(d) of the Act, the Commission has assumed that all other exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this in respect of all products of these exporters, including deep drawn stainless steel sinks. The Commission's finding was made in view of the fact that the program operates on a national level, and one selected Chinese exporter of the goods was found to have benefited from this program.

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Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
						exporters; and <ul style="list-style-type: none"> • calculated the subsidisation percentage for this program as the above unit amount over the lowest weighted average export price of the selected exporters.

PART V ASSESSMENT OF SUBSIDY PROGRAMS – CATEGORY THREE: GRANTS

20 grant programs were investigated by the Commission. The Commission’s assessment as to whether these 20 programs are countervailable subsidies in respect of deep drawn stainless steel sinks, and the rate of subsidisation under these programs, is contained in the below table.

*Note: programs marked with * in the below table were not amongst the eight programs that the Commission originally initiated investigations into, but have been investigated following additional information gathered by the Commission during its investigation.*

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
Program 2 - Research & Development (R&D) Assistance Grant	<p>Tasman’s application alleged that:</p> <p><i>During the Investigation Period, those exporters based in Foshan City were awarded the R&D Assistance Grant....</i></p> <p><i>The funds are provided for Science and Technology Research.</i></p> <p>The application was based on the findings of the CBSA in its investigation into deep drawn stainless steel sinks. In its investigation into deep drawn stainless steel sinks, the CBSA found positive evidence of receipt of this program by one of its selected exporters of those goods</p> <p>The Commission (or its predecessor, ACBPS) has previously determined that this program was a countervailable subsidy, as referenced in the Commission’s subsidy register (accessible at</p>	<p>In its questionnaire response, the GOC stated that ‘it did not identify any Chinese laws that give effect to this program’.</p> <p>In previous investigations, ACBPS found that a legal instrument that gave effect to this program is:</p> <p><i>Notice of the Office of People’s Government of Wuxing District on Publishing and Issuing the Management Measures on Three Types of Science and Technology Expenses of Wuxing District.</i></p> <p>ACBPS further found that government of Wuxing district and the Science and Technology Bureau of Wuxing District are jointly responsible for the administration of this program</p>	<p>The CBSA findings indicate that funds are provided to companies that undertake science and technology research.</p> <p>In previous investigations, ACBPS found that emphasis is placed on selecting enterprises with:</p> <ul style="list-style-type: none"> • research projects addressing scientific and technological problems; • technology innovation projects; or • projects aimed at innovation in science and 	<p>Grants provided under this program are financial contributions by the GOC, which involve a direct transfer of funds by GOC to the recipient enterprises in China.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including deep drawn stainless steel sinks).</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of deep drawn stainless steel sinks because of receipt of funds from the GOC (Section 269TACC(2)).</p> <p>Where exporters of the goods during the investigation period received a grant under the program, this would therefore</p>	<p>Only enterprises that undertake science and technology research are eligible for the subsidy.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to Section 269TAAC(3).</p>	<p><u>Selected exporters</u></p> <p>No rate will be applied to selected exporters, as no evidence was found to indicate selected exporters benefited under this program during the investigation period.</p> <p><u>Residual exporters</u></p> <p>No rate will be applied, as no selected exporters were found to be receiving benefits under this program.</p> <p><u>All other exporters</u></p> <p>As neither the GOC nor uncooperative exporters provided information regarding whether benefits were conferred on exporters under this program, relevant information has been considered⁷⁴ to conclude that</p>

⁷⁴ Pursuant to Sections 269TAACA(1)(c) and 269TAACA(1)(d), the Commissioner has acted on the basis of all the facts available and made reasonable assumptions in order to determine whether a countervailable subsidy has been received in respect of the goods. The Commissioner has determined it is reasonable to assume all other exporters received benefits under this

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Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
	<p>http://www.adcommission.gov.au/reference-material/subsidies-register.asp.</p> <p><u>WTO Notification</u></p> <p>The applicaiton advised that:</p> <p><i>The ongoing nature of this program is evidenced in the New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures of China dated 21 October 2011.</i></p>	<p>The Commission considers this to be evidence of the fact that this program is administered in several regions by different GOC bodies.</p>	<p>technology in the agricultural sector</p> <p>as well as some high and new technology industries.</p>	<p>confer a benefit in relation to deep drawn stainless steel sinks, and these financial contributions would meet the definition of a subsidy under s.269T.</p> <p>No selected exporters in the Commission's investigation reported receiving benefits under this program.</p> <p>However, considering:</p> <ul style="list-style-type: none"> • the existence of positive evidence of receipt of this program by an exporter of deep drawn stainless steel sinks to Canada; • the number of exporters of deep drawn stainless steel sinks to Australia; and • the considerable overlap between Australian and Canadian exporters observed both with selected exports and within ACBPS import data <p>it is reasonable to determine that exporters of the goods to Australia would have been in receipt of this subsidy program.</p>		<p>it is likely that uncooperative and all other exporters have had benefits conferred to them under this program during the investigation period.</p> <p>The Commission is not in possession of information about the amount of grants available under this program.</p> <p>In calculating the amount of subsidy attributable to that benefit under Section 269TACD(1), the Commission considers that the maximum subsidy amount should be calculated by working out:</p> <ul style="list-style-type: none"> • the highest possible benefit (grant) conferred under a countervailable subsidy grant program found to be received by a selected exporter as part of this investigation; and • determining the applicable per unit subsidisation amount by reference to the lowest total sales volume of the three selected exporters; and • determining a subsidisation rate (margin) by reference to the lowest weighted average export price seen amongst the selected exporters.

program, based on evidence found by the CBSA which showed one exporter of sinks to Canada received benefits from this program, and in view of the considerable overlap between exporters of deep drawn stainless steel sinks to Australia and Canada (as observed both with selected exporters and within ACBPS import data).

SEF 238 Deep Drawn Stainless Steel Sinks - China

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<p>Program 3 - Grants for Export Activities</p>	<p>In its application Tasman alleged that:</p> <p><i>During the Investigation Period, those exporters based in Foshan City were awarded Grants for Export Activities....</i></p> <p>Tasman's allegations were based on the findings of the CBSA in its investigation into deep drawn stainless steel sinks.</p> <p>To its knowledge, the Commission has not investigated this program previously.</p> <p>The CBSA found positive evidence the program (referred to as Program 33 by the CBSA) was a countervailable subsidy program received by exporters of stainless steel sinks during their investigation period, with the CBSA finding as follows:</p> <p><i>During the POI, one of the cooperative exporters reported having received payments from the local government and recorded these in the company's subsidy income ledger. The funds were provided for Foreign Trade Development. The exporter did not apply for these payments and, therefore, does not possess any other information about the program....</i></p> <p><u>WTO Notification</u></p> <p>The Commission is not aware of any</p>	<p>In its response to the Government Questionnaire, the GOC states:</p> <p><i>The applicant's application does not identify any Chinese laws that give effect to this alleged program. The only evidence that the application provided is the Canadian International Trade Tribunal's decision in relation to the subsidizing of galvanised steel wire originating in or exported from China issued on 4 September 2013.</i></p> <p>The GOC goes on to assert that it can find no evidence of the alleged program in the CBSA's abovementioned report.</p> <p>The CBSA report does not include information as to the legal basis of this program, but observes that the granting authority is the Foshan Shunde Finance Bureau.</p>	<p>The CBSA findings indicate that funds are provided under this program for companies involved in "Foreign Trade Development."</p>	<p>If received, grants provided under this program are considered to be financial contributions by the GOC, which involve a direct transfer of funds by GOC to the recipient enterprises in China.</p> <p>Due to the nature of the grant, and in light of the limited information available, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all export goods of the recipient enterprise (including deep drawn stainless steel sinks). This is due to the fact that the program is clearly limited to conferring benefit for 'export activities'.</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of deep drawn stainless steel sinks because of receipt of funds from the GOC (Section 269TACC(2)).</p> <p>Where exporters of the goods during the investigation period received a grant under the program, this would therefore confer a benefit in relation to deep drawn stainless steel sinks, and these financial contributions would meet the definition of a subsidy under s.269T.</p> <p>No selected exporters in the Commission's investigation reported receiving benefits under this program.</p>	<p>Only enterprises that undertake foreign trade are eligible for the subsidy.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to Section 269TAAC(3).</p> <p>Further, being an export-oriented subsidy, only enterprises that export goods from China are eligible.</p> <p>The Commission considers this makes the subsidy 'contingent on export performance' and hence the subsidy is specific for this reason as well.</p>	<p><u>Selected exporters</u></p> <p>No rate will be applied to selected exporters, as no evidence was found to indicate any of the selected exporters had received benefits under this program.</p> <p><u>Residual exporters</u></p> <p>No rate will be applied, as no selected exporters were found to have received benefit under this program during the investigation period.</p> <p><u>All other exporters</u></p> <p>As neither the GOC nor uncooperative exporters provided information as to whether benefits were conferred under this program, the Commissioner has considered all relevant information to conclude that it is likely that uncooperative and all other exporters have had benefits conferred to them under this program during the investigation period.⁷⁵</p> <p>The Commission is not in possession of information about the amount of grants available under this program.</p> <p>In calculating the amount of subsidy attributable to that benefit under Section 269TACD(1), the Commission</p>
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⁷⁵ Pursuant to Sections 269TAACA(1)(c) and 269TAACA(1)(d), the Commissioner has acted on the basis of all the facts available and made reasonable assumptions in order to determine whether a countervailable subsidy has been received in respect of the goods.

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	WTO notification of this program.			<p>However, considering:</p> <ul style="list-style-type: none"> the existence of positive evidence of receipt of this program by an exporter of deep drawn stainless steel sinks to Canada; the number of exporters of deep drawn stainless steel sinks to Australia; and the considerable overlap between Australian and Canadian exporters observed both with selected exports and within ACBPS import data <p>it is reasonable to determine that exporters of the goods to Australia would have been in receipt of this subsidy program.</p>		<p>considers that the maximum subsidy amount should be calculated by working out:</p> <ul style="list-style-type: none"> the highest possible benefit (grant) conferred under a countervailable subsidy grant program found to be received by a selected exporter as part of this investigation; and determining the per unit subsidisation amount by reference to the lowest total <u>export</u> sales volume⁷⁶ of the three selected exporters; and determining a subsidisation rate (margin) by reference to the lowest weighted average export price seen amongst the selected exporters. <p>The Commission considers the use of export sales volume to determine the per unit subsidy amount is most reasonable in this case, as this subsidy program is related to export activities.</p>
Program 4 - Allowance to pay loan interest	<p>In its application Tasman alleged that:</p> <p><i>During the Investigation Period, those exporters who were small and medium sized businesses and were based in Zhongshan City received an allowance from the local government to help reduce interest payments on commercial bank</i></p>	<p>In its response to the Government Questionnaire, the GOC stated:</p> <p><i>The applicant's application refers to the WTO Notification and in particular Program 46 "Fund for supporting technological innovation of the technological small and</i></p>	<p>The CBSA's findings for the certain stainless steel sinks investigation indicate that funds are provided under this program "in support of small and medium sized businesses".</p>	<p>Grants provided under this program are financial contributions by the GOC, which involve a direct transfer of funds by GOC to the recipient enterprises in China.</p> <p>Due to the nature of the grant, and in light of the limited information available, it is considered that a financial contribution would be</p>	<p>Only enterprises that are small to medium size enterprises are eligible for the subsidy.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 2 (see above).</p>

⁷⁶ The Commission considers the use of export sales volume to determine the per unit subsidy amount is most reasonable in this case, as this subsidy program is related to export activities.

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	<p>loans....</p> <p><i>The program was provided and administered by the Economic and Trade Office of the Huangpu government in Zhongshan City, Guangdong Province.</i></p> <p><i>The granting authority is the Zhongshan Municipal government.</i></p> <p><i>The Australian industry submits that the program constitutes a financial contribution, i.e., a practice of government that involves a direct transfer of funds, and confers a benefit to the recipient equal to the amount of the grant provided..</i></p> <p>This is based on the findings of the CBSA in its investigation into deep drawn stainless steel sinks.</p> <p>To its knowledge, the Commission has not investigated this program in previous investigations. In its investigation into deep drawn stainless steel sinks, the CBSA found positive evidence of receipt of this program by one of its selected exporters of those goods.</p> <p><u>WTO Notification</u></p> <p><i>New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures of China dated 21 October 2011</i></p>	<p><i>medium-sized enterprises (SMEs)" as the evidence that the alleged program exists. The two main legal instruments that give effect to Program 46, including:</i></p> <p><i>Law of the People's Republic of China on Promotion of Small and Medium-sized Enterprises;</i></p> <p><i>... and General Office of State Council Circular Guo Ban Fa No. 47 of 1999....</i></p> <p><i>The laws above are currently effective and direct the provision of the alleged subsidy. However, the laws are all national laws and not local laws. The GOC is not aware of any local laws of Zhongshan City that mandate the provision of the alleged subsidy.</i></p> <p>In the case of the CBSA investigation, the Zhongshan Municipal government was identified as the granting authority, though the GOC's response indicates it is likely that numerous granting authorities exist in China to administer the program nationally.</p>	<p>This suggests that 'small and medium sized businesses' are eligible for this program.</p>	<p>made in connection to the production, manufacture or export of all goods of the recipient enterprise (including deep drawn stainless steel sinks). This financial contribution is considered to confer a benefit to recipient manufacturers of deep drawn stainless steel sinks because of receipt of funds from the GOC (Section 269TACC(2)).</p> <p>Where exporters of the goods during the investigation period received a grant under the program, this would therefore confer a benefit in relation to deep drawn stainless steel sinks, and these financial contributions would meet the definition of a subsidy under s.269T.</p> <p>No selected exporters in the Commission's investigation reported receiving benefits under this program.</p> <p>However, considering:</p> <ul style="list-style-type: none"> • the existence of positive evidence of receipt of this program by an exporter of deep drawn stainless steel sinks to Canada; • the number of exporters of deep drawn stainless steel sinks to Australia; and • the considerable overlap between Australian and Canadian exporters observed both with selected exports and within ACBPS import data <p>it is reasonable to determine that exporters of the goods to Australia would have been in receipt of this subsidy program.</p>	<p>enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to Section 269TAAC(3).</p>	
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PUBLIC RECORD

<p>Program 5 - International Market Fund for Export Companies</p>	<p>In its application Tasman alleged that:</p> <p><i>During the Investigation Period, those exporters based in Jianghai District received a grant to support their export business.</i></p> <p><i>This program is administered by Local Finance Funds in Jianghai District, Jiangmen City.</i></p> <p><i>...In the Canadian International Trade Tribunal's recently released reasons for decision in relation to the dumping and subsidizing of steel piling pipe originating in or exported from China... found the existence of export grants for export activities (there known as program 73) during the period of investigation period (1 January 2009 to 30 June 2012).</i></p> <p>Although the application refers to the Canadian International Trade Tribunal's findings in relation to steel drilling pipe, the program was also investigated and countervailed by the CBSA in relation to its investigation into deep drawn stainless steel sinks. The CBSA found positive evidence the program was a countervailable subsidy program received by selected exporters of stainless steel sinks during their investigation period, and that it constituted a subsidy.</p> <p>To its knowledge, the Commission has not investigated this program in previous investigations.</p> <p><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>The CBSA found that this "program was established in a document titled 'Measure JiangCaiWai [2010] No. 92", and the program is "administered by Local Finance Funds in Jianghai District, Jiangmen City".</p>	<p>The CBSA found that companies that have export business were eligible to receive funds under this program.</p>	<p>Grants provided under this program are financial contributions by the GOC, which involve a direct transfer of funds by GOC to the recipient enterprises in China.</p> <p>Due to the nature of the grant, a financial contribution would be made in connection to the production, manufacture or export of all <u>export</u> goods of the recipient enterprise (including deep drawn stainless steel sinks). This is due to the fact that the program is clearly limited to conferring benefit for 'export business' companies.</p> <p>This financial contribution would confer a benefit to recipient manufacturers of deep drawn stainless steel sinks because of receipt of funds from the GOC (Section 269TACC(2)).</p> <p>Where exporters of the goods during the investigation period received a grant under the program, this would therefore confer a benefit in relation to deep drawn stainless steel sinks, and these financial contributions would meet the definition of a subsidy under s.269T.</p> <p>No selected exporters in the Commission's investigation reported receiving benefits under this program.</p> <p>However, considering:</p> <ul style="list-style-type: none"> • the existence of positive evidence of receipt of this program by an exporter of deep drawn stainless steel sinks to Canada; • the number of exporters of 	<p>Being an export-oriented subsidy, only enterprises that export goods from China are eligible.</p> <p>The Commission considers this makes the subsidy 'contingent on export performance' and hence the subsidy is specific.</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 2 (see above).</p>
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				<p>deep drawn stainless steel sinks to Australia; and</p> <ul style="list-style-type: none"> the considerable overlap between Australian and Canadian exporters observed both with selected exports and within ACBPS import data <p>it is reasonable to determine that exporters of the goods to Australia would have been in receipt of this subsidy program.</p>		
<p>Program 6 - International Market Fund for Small and Medium-sized Export Companies</p>	<p>Tasman's application alleged that during the Investigation Period:</p> <p><i>All small and medium-sized exporters have received a grant to develop their international market. This program was established in a document titled 'Measure for Administration of International Market Developing Funds of Small and Medium Sized Enterprises'....</i></p> <p>The application relied on the findings of the CBSA in its investigation into deep drawn stainless steel sinks from China in relation to this program. In that investigation, the CBSA found positive evidence the program was a countervailable subsidy program received by selected exporters of stainless steel sinks during their investigation period, and that it constituted a subsidy.</p> <p>The Commission (or its predecessor, ACBPS) considers that it has previously determined that this program was a countervailable subsidy, as referenced in the Commission's subsidy register (accessible at http://www.adcommission.gov.au/ref)</p>	<p>In previous investigations, the Commission (or ACBPS) has found the legal basis of this program to be the <i>Measures for Administration of International Market Developing Funds of Small and Medium Sized Enterprises</i>.</p> <p>The Commission has found that program is administered by the Ministry of Finance and Ministry of Commerce, with the assistance of other competent authorities, and is implemented by the local finance and foreign trade authorities in their respective jurisdictions.</p> <p>During this investigation, a selected exporter identified this program was managed either by the Zhuhai Local Government or Guangdong Provincial Government. It is considered that this is evidence of local administration of a national program.</p>	<p>The eligibility criteria for this program is limited to SME enterprises that have:</p> <ul style="list-style-type: none"> a legal personality according to law; the capacity to manage an import or export business; made exports in the previous year of 15,000,000 (before 2010) or 45,000,000 (after 2010) US dollars or less; sound financial management systems and records; employees who specialise in foreign trade and economic business who possess the basic skills of foreign trade 	<p>Grants provided under this program are financial contributions by the GOC, which involve a direct transfer of funds by GOC to the recipient enterprises in China.</p> <p>Due to the nature of the grant, and in light of the limited information available, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all <u>export</u> goods of the recipient enterprise (including deep drawn stainless steel sinks). This is due to the fact that the program is clearly limited to conferring benefit for 'export business' companies.</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of deep drawn stainless steel sinks because of receipt of funds from the GOC.</p> <p>Where exporters of the goods during the investigation period received a grant under the program, this would therefore confer a benefit in relation to deep drawn stainless steel sinks, and these financial contributions would</p>	<p>Being an export-oriented subsidy, only enterprises that export goods from China are eligible.</p> <p>The Commission consider this makes the subsidy 'contingent on export performance' and hence the subsidy is specific.</p> <p>Further, only enterprises that export goods from China are eligible.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to Section 269TAAC(3).</p>	<p><u>Selected exporters</u></p> <p>A subsidy rate will be applied to the selected exporter found to have benefited from this program.</p> <p>The Commission considers that some of the grants received under this program by the selected exporter are related to export activity to non-Australian countries, while others were more general in nature (and hence applicable to all exports, including Australian goods). The Commission has thus only included those that appeared general in nature in its subsidisation calculations for this exporter as only these are considered to have been received in respect of the goods.</p> <p>Further, it is considered that financial contributions under this program have been made in respect of all <u>export</u> sales of this exporter, and not domestic sales.</p>

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	<p>erence-material/subsidies-register.asp). In those cases, the Commission has referred to the program as ‘Matching Funds for International Market Development for SMEs’.</p> <p><u>WTO Notification</u></p> <p>Tasman submitted that “<i>the ongoing nature of this program is evidenced in the New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures of China dated 21 October 2011</i>”.</p>		<p>and economics; and</p> <ul style="list-style-type: none"> • a solid market development plan. 	<p>meet the definition of a subsidy under s.269T.</p> <p>The Commission notes that one selected exporter received benefits under this program in the investigation period, and as such this program has been received in respect of the goods.</p>		<p>In light of the above, the total applicable grant amount received by the selected exporter has been apportioned to each unit of the goods using that exporter’s total <u>export</u>⁷⁷ sales volume.⁷⁸</p> <p>This per unit amount was then calculated as a proportion of that exporters weighted average export price, to determine a subsidisation rate (percentage).</p> <p>The two other selected exporters will receive a zero subsidy rate for this program as the Commission did not find any evidence that those exporters received benefits under this program.</p> <p><u>Residual exporters</u></p> <p>Residual exporters have been attributed the same rate of per unit subsidisation determined above for the one selected exporter who received this program.</p> <p>This was then calculated as a percentage of subsidisation by attributing this per unit amount over the weighted average export price of the three selected exporters.</p>
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⁷⁷ It is noted that this approach differs to that taken in the relevant Exporter Visit Report, in which a unit subsidisation amount was determined by reference to total export sales revenue. It is considered that the approach of using export sales volume is more appropriate in the circumstances. The Commission considers it is reasonable to use export sales volume as the basis of working out per unit subsidisation for this program, as it is related to export activities.

⁷⁸ In accordance with Section 269TACD(1), the amount of that benefit is taken to be equal to the sum granted.

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						<p><u>All other exporters</u></p> <p>As neither the GOC nor uncooperative exporters provided information as to whether these exporters benefited from this program, the Commissioner has considered all relevant information to conclude that it is likely that uncooperative and all other exporters have had benefits conferred to them under this program during the investigation period in the form of direct transfers of funds.⁷⁹</p> <p>In calculating the amount of subsidy, the Commission:</p> <ul style="list-style-type: none"> • attributed the actual applicable subsidy amount received under this program by the selected exporter; • determined the per unit subsidisation amount by reference to the lowest total <u>export</u> sales volume of the three selected exporters; and • determined a subsidisation rate (margin) by reference to the lowest weighted average export price amongst the selected exporters. <p>The Commission considers the use of export sales volume to determine the per unit</p>
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⁷⁹ Pursuant to Sections 269TAACA(1)(c) and 269TAACA(1)(d), the Commissioner has acted on the basis of all the facts available and made reasonable assumptions in order to determine whether a countervailable subsidy has been received in respect of the goods. In the absence of usage information, the Commissioner has determined it is reasonable to assume all other exporters received benefits under this program, nothing that one selected exporter was found to have received benefit under this program.

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						subsidy amount is most reasonable in this case, as this subsidy program is related to export activities.
<p>Program 9 - Award to top ten tax payer*</p>	<p>One selected exporter submitted that it had received a benefit under this program, and this was confirmed during the exporter verification visit.</p> <p>The Commission initiated investigations into this program following receipt of this information, requesting information from the GOC in relation to this program in the Supplementary Government Questionnaire.</p> <p>To its knowledge, the Commission has not investigated this program in previous investigations.</p> <p><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>The Commission is not aware of any legal basis for this program. Information gathered from the selected exporter has shown that the program is administered by the local government of Shenwan Town of Zhongshan City.</p>	<p>The recipient selected exporter submitted that companies that are amongst the top ten tax payers are eligible for this grant.</p>	<p>A grant provided under this program would be a financial contribution by the GOC, which involves a direct transfer of funds by GOC to the recipient enterprises in China.</p> <p>Due to the nature of the grant, and in light of the limited information available, it is considered that a financial contribution under each program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including deep drawn stainless steel sinks).</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of deep drawn stainless steel sinks because of receipt of funds from the GOC (Section 269TACC(2)).</p> <p>Where exporters of deep drawn stainless steel sinks during the investigation period received a grant under the program, this would therefore confer a benefit in relation to the goods, and this financial contribution would meet the definition of a subsidy under s.269T.</p>	<p>Only enterprises that are top ten taxpayers within Shenwan Town of Zhongshan City are eligible for the subsidy.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to Section 269TAAC(3).</p>	<p><u>Selected exporters</u></p> <p>A subsidy rate will be applied to the selected exporter found to have benefited from this program.</p> <p>For the selected exporter that received a financial contribution during the investigation period under this program, the total amount of grant received by the selected exporter has been apportioned to each unit of the goods using that exporter's total sales volume.⁸⁰</p> <p>This per unit amount was then calculated as a proportion of that exporter's weighted average export price, to determine a subsidisation rate (percentage).</p> <p>No rate was applied to the two other selected exporters, as no evidence was observed to show these companies received benefits under this program.</p> <p><u>Residual exporters</u></p>

⁸⁰ In accordance with Section 269TACD(1), the amount of that benefit is taken to be equal to the sum granted.

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				<p>The Commission notes that one selected exporter received benefits under this program in the investigation period, and as such this program has been received in respect of the goods.</p>	<p>Residual exporters have been attributed the same rate of per unit subsidisation determined above for the one selected exporter who received this program.</p> <p>This was then calculated as a percentage of subsidisation by attributing this per unit amount over the weighted average export price of the three selected exporters.</p> <p><u>All other exporters</u></p> <p>As neither the GOC nor uncooperative exporters provided information as to whether these exporters benefited from this program, the Commissioner has considered all relevant information⁸¹ to conclude that it is likely that uncooperative and all other exporters have had benefits conferred to them under this program during the investigation period in the form of direct transfers of funds (grants).</p> <p>In calculating the amount of subsidy attributable to that benefit,⁸² the Commission:</p> <ul style="list-style-type: none"> • worked out the full amount of the grant received by the selected
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⁸¹ Pursuant to Sections 269TAACA(1)(c) and 269TAACA(1)(d), the Commissioner has acted on the basis of all the facts available and made reasonable assumptions in order to determine whether a countervailable subsidy has been received in respect of the goods. In the absence of usage information, the Commissioner has determined it is reasonable to assume all other exporters received benefits under this program, based on the fact that one selected exporter received benefit under this program.

⁸² Pursuant to Section 269TACD(1).

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						<p>exporter to the investigation that received this program;</p> <ul style="list-style-type: none"> determined the per unit subsidisation amount by reference to the lowest total sales volume of the three selected exporters; and determined a subsidisation rate (margin) by reference to the lowest weighted average export price seen amongst the selected exporters.
<p>Program 10 – Assistance to take part in overseas trade fairs*</p>	<p>One selected exporter submitted that it had received a benefit under this program, and this was confirmed during the exporter verification visit.</p> <p>The exporter submitted that, for their company, the purpose of the subsidy was to assist in attending the China International Kitchen & Bathroom Equipment Exhibition.</p> <p>The Commission initiated investigations into this program following receipt of this information, requesting information from the GOC in relation to this program in the Supplementary Government Questionnaire.</p> <p>To its knowledge, the Commission has not investigated this program in previous investigations.</p> <p><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>The Commission is not aware of any legal basis for this program.</p> <p>Information gathered from the selected exporter has shown that the program is administered by the local Government of Shenwan Town of Zhongshan City.</p>	<p>Enterprises are eligible for this grant if they attend specific exhibitions listed in a document published by the local Government of Shenwan Town of Zhongshan City.</p>	<p>A grant provided under this program would be a financial contribution by the GOC, which involves a direct transfer of funds by GOC to the recipient enterprises in China.</p> <p>Due to the nature of the grant, and in light of the limited information available, it is considered that a financial contribution under each program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including deep drawn stainless steel sinks).</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of deep drawn stainless steel sinks because of receipt of funds from the GOC (Section 269TACC(2)).</p> <p>Where exporters of deep drawn stainless steel sinks during the investigation period received a grant the Commission considers it, this would therefore confer a</p>	<p>Only enterprises that attend specific trade fairs are eligible for the subsidy.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to Section 269TAAC(3).</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 9 (see above).</p>

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				<p>benefit in relation to the goods, and this financial contribution would meet the definition of a subsidy under s.269T.</p> <p>The Commission notes that one selected exporter received benefits under this program in the investigation period, and as such this program has been received in respect of the goods.</p>		
<p>Program 11 - Grant for management certification*</p>	<p>During its investigations with a selected exporter, the Commission obtained a copy of a <i>Table of grants Awarded by Ministry of Commerce (Zhongshan)</i>.</p> <p>According to this table, Chinese companies are eligible to receive grants for management certification to assist companies in building managerial qualifications in areas including quality assurance and occupational health and safety.</p> <p>No selected exporters reported receiving benefits under this program.</p> <p>To its knowledge, the Commission has not investigated this program in previous investigations.</p> <p><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>The Commission is not aware of any legal basis for this program.</p> <p>Information gathered from the selected exporter has shown that the Ministry of Commerce (Zhongshan) administers this program.</p>	<p>Companies that provide for staff to undertake managerial certifications are eligible for this program.</p>	<p>A grant provided under this program would be a financial contribution by the GOC, which involves a direct transfer of funds by GOC to the recipient enterprises in China.</p> <p>Due to the nature of the grant, and in light of the limited information available, it is considered that a financial contribution under each program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including deep drawn stainless steel sinks).</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of deep drawn stainless steel sinks because of receipt of funds from the GOC (Section 269TACC(2)).</p> <p>Where exporters of deep drawn stainless steel sinks during the investigation period received a grant under the program, this would therefore confer a benefit in relation to the goods, and this financial contribution would meet the definition of a subsidy under s.269T.</p>	<p>Only enterprises that fund management certifications are eligible for this grant.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to Section 269TAAC(3).</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 2 (see above).</p>

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				<p>Although the Commission has not observed evidence of receipt of this program amongst the selected exporters, it is reasonable to find that some exporters of deep drawn stainless steel sinks would have been eligible for this program during the investigation period, and received benefits in respect of the goods as a result.</p>		
<p>Program 12 - Grant for certification of product patents*</p>	<p>One selected exporter submitted that it had received a benefit under this program, and this was confirmed during the exporter verification visit.</p> <p>The Commission initiated investigations into this program following receipt of this information, requesting information from the GOC in relation to this program in the Supplementary Government Questionnaire.</p> <p>To its knowledge, the Commission has not investigated this program in previous investigations.</p> <p><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>The Commission is not aware of any legal basis for this program.</p> <p>Information gathered with the selected exporter has shown that the local Government of Shenwan Town of Zhongshan City administers this program.</p>	<p>The recipient company advised that enterprises are eligible for grants of RMB 2,000 each application to assist the companies in applying for patents for their goods.</p>	<p>A grant provided under this program would be a financial contribution by the GOC, which involves a direct transfer of funds by GOC to the recipient enterprises in China.</p> <p>Due to the nature of the grant, and in light of the limited information available, it is considered that a financial contribution under each program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including deep drawn stainless steel sinks).</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of deep drawn stainless steel sinks because of receipt of funds from the GOC (Section 269TACC(2)).</p> <p>Where exporters of deep drawn stainless steel sinks during the investigation period received grants under the program that related to their entire business or export activities to Australia, this would confer a benefit in relation to the goods. This issue is discussed further below.</p>	<p>Only enterprises that are located in Shenwan Town that apply for patents are eligible for the subsidy. This limits access to the subsidy to enterprises that are in possession of patentable goods.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to Section 269TAAC(3).</p>	<p><u>Selected exporters</u></p> <p>No subsidy rate was applied for the selected exporter that received benefits under this program.</p> <p>Having regard to the nature of the program (receipt in respect of patents) and the individual activities of that exporter (to only export the goods to Australia to a customer that owns the intellectual property rights of the exported goods themselves) we consider that it is likely that this program did not confer benefit on the goods in respect of this exporter.</p> <p>The Commission therefore does not consider that a subsidy rate under his program is attributable to the goods exported by this selected exporter and hence a zero rate of subsidy has been attributed under this program. This is a deviation from the approach taken in the applicable Exporter Exporter Visit Report, following further consideration by the Commission.</p>

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						<p>No subsidy rate was applied to the two other selected exporters, as no evidence was observed to show these companies received benefits under this program during the investigation period.</p> <p><u>Residual exporters</u></p> <p>No rate will be applied, as no selected exporters were found have received benefit under this program.</p> <p><u>All other exporters</u></p> <p>As neither the GOC nor uncooperative exporters provided information as to whether exporters benefited from this program, the Commission has considered all relevant information⁸³ to conclude that it is likely that uncooperative and all other exporters have had benefits conferred to them under this program during the investigation period in the form of direct transfers of funds (grants).</p> <p>In calculating the amount of subsidy attributable to that benefit⁸⁴, the Commission:</p> <ul style="list-style-type: none"> • worked out the full amount of the grant
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⁸³ Pursuant to Sections 269TAACA(1)(c) and 269TAACA(1)(d), the Commissioner has acted on the basis of all the facts available and made reasonable assumptions in order to determine whether a countervailable subsidy has been received in respect of the goods. In the absence of usage information, the Commissioner has determined it is reasonable to assume all other exporters received benefits under this program, based on the fact that one selected exporter received benefit under this program and the inclusion of this program in the *Table of grants Awarded by Ministry of Commerce (Zhongshan)*.

⁸⁴ Pursuant to Section 269TACD(1).

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						<p>received by the selected exporter to the investigation that received this program;</p> <ul style="list-style-type: none"> • determined the per unit subsidisation amount by reference to the lowest total sales volume of the three selected exporters; and • determined a subsidisation rate (margin) by reference to the lowest weighted average export price seen amongst the selected exporters.
<p>Program 13 – Grant for inventions, utility models and designs*</p>	<p>During its investigations with a selected exporter, the Commission obtained a copy of a <i>Table of grants Awarded by Ministry of Commerce (Zhongshan)</i>.</p> <p>According to this table, Chinese companies are eligible to receive grants for management certification to assist companies in building managerial qualifications in areas including quality assurance and occupational health and safety.</p> <p>No selected exporters reported receiving benefits under this program.</p> <p>To its knowledge, the Commission has not investigated this program in previous investigations.</p> <p><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>The Commission is not aware of any legal basis for this program.</p> <p>Information gathered with the selected exporter has shown that the Ministry of Commerce (Zhongshan) administers this program.</p>	<p>Companies that apply for intellectual property rights are eligible for benefits under this program.</p>	<p>A grant provided under this program would be a financial contribution by the GOC, which involves a direct transfer of funds by GOC to the recipient enterprises in China.</p> <p>Due to the nature of the grant, and in light of the limited information available, it is considered that a financial contribution under each program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including deep drawn stainless steel sinks).</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of deep drawn stainless steel sinks because of receipt of funds from the GOC (Section 269TACC(2)).</p> <p>Where exporters of deep drawn stainless steel sinks during the investigation period received a grant under the program, this would therefore confer a benefit in</p>	<p>Only enterprises that apply for intellectual property rights under are eligible for benefits under this program. This limits access of the program to companies that have developed or otherwise gained intellectual property rights.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to Section 269TAAC(3).</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 2 (see above).</p>

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				<p>relation to the goods, and this financial contribution would meet the definition of a subsidy under s.269T.</p> <p>Although the Commission has not observed evidence of receipt of this program amongst the selected exporters, it is reasonable to find that some exporters of deep drawn stainless steel sinks would have been eligible for this program during the investigation period, and received benefits in respect of the goods as a result.</p>		
<p>Program 14 - Grant for international marketing*</p>	<p>During its investigations with a selected exporter, the Commission obtained a copy of a <i>Table of grants Awarded by Ministry of Commerce (Zhongshan)</i>.</p> <p>According to this table, Chinese companies are eligible to receive grants for management certification to assist companies in building managerial qualifications in areas including quality assurance and occupational health and safety.</p> <p>No selected exporters reported receiving benefits under this program.</p> <p>To its knowledge, the Commission has not investigated this program in previous investigations.</p> <p><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>The Commission is not aware of any legal basis for this program.</p> <p>Information gathered with the selected exporter has shown that the Ministry of Commerce (Zhongshan) administers this program.</p>	<p>Companies are required to show that they have the capacity to translate marketing materials into at least one other foreign language to be eligible to receive benefits under this program.</p>	<p>A grant provided under this program would be a financial contribution by the GOC, which involves a direct transfer of funds by GOC to the recipient enterprises in China.</p> <p>Due to the nature of the grant, and in light of the limited information available, it is considered that a financial contribution under each program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including deep drawn stainless steel sinks).</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of deep drawn stainless steel sinks because of receipt of funds from the GOC (Section 269TACC(2)).</p> <p>Where exporters of deep drawn stainless steel sinks during the investigation period received a grant under the program, this would therefore confer a benefit in relation to the goods, and this financial contribution would meet</p>	<p>Only enterprises that have a demonstrated translator capacity are eligible for benefits under this program.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to Section 269TAAC(3).</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 3 (see above).</p>

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				<p>the definition of a subsidy under s.269T.</p> <p>Although the Commission has not observed evidence of receipt of this program amongst the selected exporters, it is reasonable to find that some exporters of deep drawn stainless steel sinks would have been eligible for this program during the investigation period, and received benefits in respect of the goods as a result.</p>		
<p>Program 15 - Subsidy to electronic commerce*</p>	<p>One selected exporter submitted that it had received a benefit under this program, and this was confirmed during the exporter verification visit.</p> <p>The Commission initiated investigations into this program following receipt of this information, requesting information from the GOC in relation to this program in the Supplementary Government Questionnaire.</p> <p>To its knowledge, the Commission has not investigated this program in previous investigations.</p> <p><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>The Commission is not aware of any legal basis for this program</p> <p>Information gathered with the selected exporter has shown that the program is administered by the local Government of Zhongshan City.</p>	<p>The recipient selected exporter submitted that any enterprise located in Zhongshan City that uses e-commerce websites to sell or promote its products can apply for this subsidy. The subsidy is granted only to the named e-commerce websites published by the administering authority.</p>	<p>A grant provided under this program would be a financial contribution by the GOC, which involves a direct transfer of funds by GOC to the recipient enterprises in China.</p> <p>Due to the nature of the grant, and in light of the limited information available, it is considered that a financial contribution under each program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including deep drawn stainless steel sinks).</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of deep drawn stainless steel sinks because of receipt of funds from the GOC (Section 269TACC(2)).</p> <p>Where exporters of deep drawn stainless steel sinks during the investigation period received a grant under the program, this would therefore confer a benefit in relation to the goods, and this financial contribution would meet the definition of a subsidy under</p>	<p>Only enterprises that are located in Zhongshan City that use select e-commerce websites for advertising and sales purposes are eligible for the subsidy.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to Section 269TAAC(3).</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 9 (see above).</p>

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				s.269T. The Commission notes that one selected exporter received benefits under this program in the investigation period, and as such this program has been received in respect of the goods.		
Program 16 - Grant for overseas advertising and trademark registration*	<p>During its investigations with a selected exporter, the Commission obtained a copy of a <i>Table of grants Awarded by Ministry of Commerce (Zhongshan)</i>.</p> <p>According to this table, Chinese companies are eligible to receive grants for management certification to assist companies in building managerial qualifications in areas including quality assurance and occupational health and safety.</p> <p>No selected exporters reported receiving benefits under this program.</p> <p>To its knowledge, the Commission has not investigated this program in previous investigations.</p> <p><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>The Commission is not aware of any legal basis for this program.</p> <p>Information gathered with the selected exporter has shown that the Ministry of Commerce (Zhongshan) administers this program.</p>	<p>Companies are required to show that they have incurred costs relating to advertising in foreign media or trademark registration to be eligible to receive benefits under this program.</p>	<p>A grant provided under this program would be a financial contribution by the GOC, which involves a direct transfer of funds by GOC to the recipient enterprises in China.</p> <p>Due to the nature of the grant, and in light of the limited information available, it is considered that a financial contribution under each program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including deep drawn stainless steel sinks).</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of deep drawn stainless steel sinks because of receipt of funds from the GOC (Section 269TACC(2)).</p> <p>Where exporters of deep drawn stainless steel sinks during the investigation period received a grant under the program, this would therefore confer a benefit in relation to the goods, and this financial contribution would meet the definition of a subsidy under s.269T.</p> <p>Although the Commission has not observed evidence of receipt of this program amongst the selected</p>	<p>Only enterprises that have incurred costs relating to advertising in foreign media or trademark registration are eligible for benefits under this program.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to Section 269TAAC(3).</p> <p>Further, the subsidy is in fact limited to exporting enterprises, and hence is contingent on export performance and hence specific for this reason.</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 3 (see above).</p>

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				exporters, it is reasonable to find that some exporters of deep drawn stainless steel sinks would have been eligible for this program during the investigation period, and received benefits in respect of the goods as a result.		
<p>Program 17 - Grant for overseas marketing or study*</p>	<p>During its investigations with a selected exporter, the Commission obtained a copy of a <i>Table of grants Awarded by Ministry of Commerce (Zhongshan)</i>.</p> <p>According to this table, Chinese companies are eligible to receive grants for management certification to assist companies in building managerial qualifications in areas including quality assurance and occupational health and safety.</p> <p>No selected exporters reported receiving benefits under this program.</p> <p>To its knowledge, the Commission has not investigated this program in previous investigations.</p> <p><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>The Commission is not aware of any legal basis for this program.</p> <p>Information gathered with the selected exporter has shown that the Ministry of Commerce (Zhongshan) administers this program.</p>	<p>Companies are required to show that they have incurred expenses relating to overseas marketing or study visits to be eligible to receive benefits under this program.</p>	<p>A grant provided under this program would be a financial contribution by the GOC, which involves a direct transfer of funds by GOC to the recipient enterprises in China.</p> <p>Due to the nature of the grant, and in light of the limited information available, it is considered that a financial contribution under each program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including deep drawn stainless steel sinks).</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of deep drawn stainless steel sinks because of receipt of funds from the GOC (Section 269TACC(2)).</p> <p>Where exporters of deep drawn stainless steel sinks during the investigation period received a grant under the program, this would therefore confer a benefit in relation to the goods, and this financial contribution would meet the definition of a subsidy under s.269T.</p> <p>Although the Commission has not observed evidence of receipt of this program amongst the selected exporters, it is reasonable to find</p>	<p>Only enterprises that have incurred expenses relating to overseas marketing or study visits are eligible to receive benefits under this program.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to Section 269TAAC(3).</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 2 (see above).</p>

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				that some exporters of deep drawn stainless steel sinks would have been eligible for this program during the investigation period, and received benefits in respect of the goods as a result.		
Program 18 - Gaolan Port Subsidy*	<p>One selected exporter submitted that it had received a benefit under this program, and this was confirmed during the exporter verification visit.</p> <p>The Commission initiated investigations into this program following receipt of this information, requesting information from the GOC in relation to this program in the Supplementary Government Questionnaire.</p> <p>To its knowledge, the Commission has not investigated this program in previous investigations.</p> <p><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p><i>Interim Provisions upon Further Improving the Handling Capacity of the Containers in Gaolan Harbor</i> (ZHUFU [2012] No.71) issued on August 16, 2012 by Zhujiang Municipal Government.</p> <p>The recipient exporter advised that companies are reimbursed by the administrating authority (International Container Port (Gaolan) Co. Ltd.) after each quarter of shipments.</p>	<p>The recipient exporter submitted that to be eligible for this grant the company must ship goods through Gaolan Port.</p>	<p>A grant provided under this program would be a financial contribution by the GOC, which involves a direct transfer of funds by GOC to the recipient enterprises in China.</p> <p>Due to the nature of the grant, and in light of the limited information available, it is considered that a financial contribution under each program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including deep drawn stainless steel sinks).</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of deep drawn stainless steel sinks because of receipt of funds from the GOC (Section 269TACC(2)).</p> <p>Where exporters of deep drawn stainless steel sinks during the investigation period received a grant under the program, this would therefore confer a benefit in relation to the goods, and this financial contribution would meet the definition of a subsidy under s.269T.</p> <p>The Commission notes that one selected exporter received benefits under this program in the investigation period, and as such this program has been received in respect of the goods.</p>	<p>Only enterprises that ship goods via Gaolan Port are eligible for the subsidy.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to Section 269TAAC(3).</p> <p>Further, the subsidy is in fact limited to exporting enterprises, and hence is contingent on export performance, as it is targeted at exported goods.</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 6 (see above).</p>

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<p>Program 19 - Information development subsidy*</p>	<p>One selected exporter submitted that it had received a benefit under this program, and this was confirmed during the exporter verification visit.</p> <p>The Commission initiated investigations into this program following receipt of this information, requesting information from the GOC in relation to this program in the Supplementary Government Questionnaire.</p> <p>To its knowledge, the Commission has not investigated this program in previous investigations.</p> <p><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>The Commission is not aware of any legal basis for this program.</p> <p>The selected exporter submitted the program is administered by the Zhuhai SME Service Center</p>	<p>Enterprises must be involved in the development of information technology to be eligible for this grant.</p>	<p>A grant provided under this program would be a financial contribution by the GOC, which involves a direct transfer of funds by GOC to the recipient enterprises in China.</p> <p>Due to the nature of the grant, and in light of the limited information available, it is considered that a financial contribution under each program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including deep drawn stainless steel sinks).</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of deep drawn stainless steel sinks because of receipt of funds from the GOC (Section 269TACC(2)).</p> <p>Where exporters of deep drawn stainless steel sinks during the investigation period received a grant under the program, this would therefore confer a benefit in relation to the goods, and this financial contribution would meet the definition of a subsidy under s.269T.</p> <p>The Commission notes that one selected exporter received benefits under this program in the investigation period, and as such this program has been received in respect of the goods.</p>	<p>Only enterprises that are involved in the development of information technology are eligible for the subsidy.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to Section 269TAAC(3).</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 9 (see above).</p>
<p>Program 20 - Foreign Trade Exhibition Activity Fund*</p>	<p>One selected exporter submitted that it had received a benefit under this program, and this was confirmed during the exporter verification visit.</p>	<p>The Commission is not aware of any legal basis for this program.</p> <p>The selected exporter</p>	<p>The recipient exporter submitted that companies attend exhibitions and then apply to</p>	<p>A grant provided under this program would be a financial contribution by the GOC, which involves a direct transfer of funds by GOC to the recipient</p>	<p>Only enterprises that attend international trade exhibitions are eligible for the subsidy.</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 6 (see above).</p>

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	<p>The Commission initiated investigations into this program following receipt of this information, requesting information from the GOC in relation to this program in the Supplementary Government Questionnaire.</p> <p>To its knowledge, the Commission has not investigated this program in previous investigations.</p> <p><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>submitted the program is administered by the Zhuhai SME Service Center.</p>	<p>the relevant administering authority for the reimbursement of their expenses.</p>	<p>enterprises in China.</p> <p>Due to the nature of the grant, and in light of the limited information available, it is considered that a financial contribution under each program would be made in connection to the production, manufacture or export of all <u>export</u> goods of the recipient enterprise (including exported deep drawn stainless steel sinks). This is due to the grant being awarded in relation to foreign trade exhibitions, being clearly directed at export markets.</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of deep drawn stainless steel sinks because of receipt of funds from the GOC (Section 269TACC(2)).</p> <p>Where exporters of deep drawn stainless steel sinks during the investigation period received a grant under the program, this would therefore confer a benefit in relation to the goods, and this financial contribution would meet the definition of a subsidy under s.269T.</p> <p>The Commission notes that one selected exporter received benefits under this program in the investigation period, and as such this program has been received in respect of the goods.</p>	<p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to Section 269TAAC(3).</p> <p>Further, the subsidy is in fact limited to exporting enterprises, and hence is contingent on export performance, and is specific for this reason also.</p>	
<p>Program 21 - Zhuhai Technology Reform & Renovation Fund*</p>	<p>One selected exporter submitted that it had received a benefit under this program, and this was confirmed during the exporter verification visit.</p> <p>The Commission initiated</p>	<p>The Commission is not aware of any legal basis for this program.</p> <p>The selected exporter submitted the program is</p>	<p>The selected exporter that received this submitted that companies are required to</p>	<p>A grant provided under this program would be a financial contribution by the GOC, which involves a direct transfer of funds by GOC to the recipient enterprises in China.</p>	<p>Only enterprises that undertake technological innovation projects are eligible for the subsidy.</p> <p>As the criteria or</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 9 (see above).</p>

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	<p>investigations into this program following receipt of this information, requesting information from the GOC in relation to this program in the Supplementary Government Questionnaire.</p> <p>The Commission inadvertently duplicated this program in the Supplementary Government Questionnaire sent to the GOC and the associated note for file placed on the Commission's website (with the duplication initially being called "Program 22").</p> <p>To its knowledge, the Commission has not investigated this program in previous investigations.</p> <p><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>administered by the Zhuhai Finance Bureau.</p>	<p>undertake a technological innovation project to be eligible for the grant. Other specific eligibility criteria relate to issues including company revenue, taxation, and investment scale.</p> <p>Companies need to submit an application and provide evidence of project fulfilment, purchase of equipment, etc. as part of the application process.</p>	<p>Due to the nature of the grant, and in light of the limited information available, it is considered that a financial contribution under each program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including deep drawn stainless steel sinks).</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of deep drawn stainless steel sinks because of receipt of funds from the GOC (Section 269TACC(2)).</p> <p>Where exporters of deep drawn stainless steel sinks during the investigation period received a grant under the program, this would therefore confer a benefit in relation to the goods, and this financial contribution would meet the definition of a subsidy under s.269T.</p> <p>The Commission notes that one selected exporter received benefits under this program in the investigation period, and as such this program has been received in respect of the goods.</p>	<p>conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to Section 269TAAC(3).</p>	
<p>Program 22 - Zhuhai Support the Strong Enterprise Interests Subsidy*</p>	<p>One selected exporter submitted that it had received a benefit under this program, and this was confirmed during the exporter verification visit.</p> <p>The Commission initiated investigations into this program following receipt of this information, requesting information from the GOC in relation to this program in the Supplementary Government</p>	<p>The Commission is not aware of any legal basis for this program.</p> <p>The selected exporter submitted the program is administered by the Zhuhai Finance Bureau.</p>	<p>The selected exporter that received this program submitted that the eligibility criteria for this program are confidential.</p> <p>However, the criteria relate to the</p>	<p>A grant provided under this program would be a financial contribution by the GOC, which involves a direct transfer of funds by GOC to the recipient enterprises in China.</p> <p>Due to the nature of the grant, and in light of the limited information available, it is considered that a financial contribution under each</p>	<p>As the criteria of this program limit it to certain types of companies in China, the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China.</p> <p>The specificity of the</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 9 (see above).</p>

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	<p>Questionnaire.</p> <p>This program was inadvertently excluded from the Supplementary Government Questionnaire sent to the GOC (and the associated file note released on the Commission's electronic public record). However, it is appropriate to assess this program for the purposes of the SEF.</p> <p>The Commission encourages the GOC to make submissions in relation to this program in response to the SEF.</p> <p>To its knowledge, the Commission has not investigated this program in previous investigations.</p> <p><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>		<p>company being classified as a specific type of company in China.</p> <p>The exporter submitted that companies must submit an application form and bank loan contracts and interest payment to the authority.</p>	<p>program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including deep drawn stainless steel sinks).</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of deep drawn stainless steel sinks because of receipt of funds from the GOC (Section 269TACC(2)).</p> <p>Where exporters of deep drawn stainless steel sinks during the investigation period received a grant under the program, this would therefore confer a benefit in relation to the goods, and this financial contribution would meet the definition of a subsidy under s.269T.</p> <p>The Commission notes that one selected exporter received benefits under this program in the investigation period, and as such this program has been received in respect of the goods.</p>	<p>subsidy is not excepted by reference to s.269TAAC(3).</p> <p>For these the subsidy is specific</p>	
<p>Program 23 - Zhuhai Research & Development Assistance Fund*</p>	<p>One selected exporter submitted that it had received a benefit under this program, and this was confirmed during the exporter verification visit.</p> <p>The Commission initiated investigations into this program following receipt of this information, requesting information from the GOC in relation to this program in the Supplementary Government Questionnaire.</p> <p>To its knowledge, the Commission has not investigated this program in previous investigations.</p>	<p>The Commission is not aware of any legal basis for this program.</p> <p>The selected exporter submitted the program is administered by the Zhuhai Finance Bureau.</p>	<p>The selected exporter that received this program submitted that companies need to operate within specific or high technology industries in order to be eligible and spend amounts on research and development.</p> <p>Companies receive the grant by</p>	<p>A grant provided under this program would be a financial contribution by the GOC, which involves a direct transfer of funds by GOC to the recipient enterprises in China.</p> <p>Due to the nature of the grant, and in light of the limited information available, it is considered that a financial contribution under each program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including deep drawn stainless</p>	<p>Only enterprises that fall within specific or high technology industries are eligible to receive the subsidy.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 9 (see above).</p>

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	<p><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>		<p>reporting research and development expenses to the administering body and the body calculates the amount payable and make an associated payment.</p>	<p>steel sinks).</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of deep drawn stainless steel sinks because of receipt of funds from the GOC (Section 269TACC(2)).</p> <p>Where exporters of deep drawn stainless steel sinks during the investigation period received a grant under the program, this would therefore confer a benefit in relation to the goods, and this financial contribution would meet the definition of a subsidy under s.269T.</p> <p>The Commission notes that one selected exporter received benefits under this program in the investigation period, and as such this program has been received in respect of the goods.</p>	<p>subsidy is not excepted by reference to Section 269TAAC(3).</p>	
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PART VI ADEQUATE REMUNERATION FOR STAINLESS STEEL COIL

After determining that SIEs that produced and supplied stainless steel in China are ‘public bodies’ for the purposes of the Act, the Commission has determined whether the provision of goods by SIEs conferred a benefit in respect of the goods (i.e. whether this provision of stainless steel was at less than adequate remuneration).

In doing so, the Commission has sought to establish an appropriate benchmark for stainless steel (in coil or sheet form) in China, having regard to the guidelines set out in ss.269TACC(4) of the Act, and Article 14(d) of the *SCM Agreement*.

VI(i) THE ACT AND SCM AGREEMENT

Section 269TACC(4) of the Act provides:

For the purposes of paragraphs (3)(d) and (e), the adequacy of remuneration in relation to goods or services is to be determined having regard to prevailing market conditions for like goods or services in the country where those goods or services are provided or purchased.

[Emphasis added]

Article 14(d) of the *SCM Agreement* provides:

the provision of goods or services or purchase of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

[Emphasis added]

VI(ii) USE OF EXTERNAL BENCHMARKS - DS257

In the DS257 dispute, the issue of the use of benchmarks for determining whether goods were provided at less than adequate remuneration in terms of Article 14(d) of the *SCM Agreement* was examined in detail.

In particular, DS257 examined the circumstances under which an ‘external benchmark’ (i.e. a benchmark established outside of the domestic market of like goods) can be used.

Key elements of the Appellate Body’s findings in the DS257 dispute are outlined below:

...an investigating authority may use a benchmark other than private prices of the goods in question in the country of provision, when it has been established that those private prices

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are distorted, because of the predominant role of the government in the market as a provider of the same or similar goods. When an investigating authority resorts, in such a situation, to a benchmark other than private prices in the country of provision, the benchmark chosen must, nevertheless, relate or refer to, or be connected with, the prevailing market conditions in that country, and must reflect price, quality, availability, marketability, transportation and other conditions of purchase or sale, as required by Article 14(d).

...an external benchmark can only be used in situations where the 'predominant role of the government in the market [is] as a provider of the same or similar goods' and where the government distorts the prices of those goods in the market by reason of its predominance. Even then, a benchmark may only be used which relates or refers to, or is connected with the prevailing market conditions in that country and which reflects price, quality, availability, marketability, transportation and other conditions of purchase or sale as required by Article 14(d).⁸⁵

[Emphasis added]

The GOC referred to the Appellate Body's findings in DS257 in its response to the Government Questionnaire.

VI(iii) INTERESTED PARTY SUBMISSIONS

Throughout the investigation, the Commission has received numerous submissions from interested parties as to what benchmark should be used to determine adequate remuneration in relation to purchases of stainless steel by Chinese exporters from SIEs in China.

Note: These submissions also often relate to determining the substitute to be used in determining a reasonably competitive market cost for stainless steel when constructing normal values in line with Regulation 180(2) – discussed further in Non-Confidential Appendix 3.

The salient points of these submissions are outlined below.

- The application does not provide sufficient evidence to establish that Chinese private stainless steel prices are so distorted to make them inappropriate for establishing a benchmark for adequate remuneration for stainless steel coil in China.⁸⁶
- The use of a MEPS composite benchmark is not appropriate as it in no way relates or is connected to the prevailing market conditions in China.⁸⁷
- The Trade Remedies Review Officer (TMRO) has previously advised that adequacy of remuneration needs to be established at whether the adequacy of remuneration provided is adequate to compensate the supplier for the products sold.⁸⁸
- Based on the understanding that Tasman imports stainless steel from Thailand, the benchmark price should be the price paid by Tasman for its Thai imported stainless steel.⁸⁹

⁸⁵ At paragraph 103.

⁸⁶ GOC, *Response to the Government Questionnaire*.

⁸⁷ GOC, *Response to the Government Questionnaire*.

⁸⁸ GOC, *Response to the Government Questionnaire*.

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- Any benchmark used by the Commission should have regard to the economic development of China.⁹⁰
- A MEPS world composite price (as submitted by Tasman in its application as an appropriate substitute price) is not appropriate as:
 - it does not take into account the economic conditions and competitive advantages of the Chinese stainless steel market; and
 - it includes ‘flat and long’ products, but only flat products are used to make stainless steel sinks.⁹¹
- Actual stainless steel prices incurred in China by exporters when purchasing from non-state owned enterprises should be used as a first resort.⁹²
- If not the above, then surrogate prices from a country that has similar macro-economic indicators and market conditions to China should be used.⁹³
- Any benchmark price that is based on an Asian benchmark price would be necessarily impacted by the prevalence of Chinese stainless steel in the region and should be rejected.⁹⁴
- If a MEPS price is used, there is no justification for not including Asian MEPS prices in any MEPS composite price (noting that Asian prices were excluded from the MEPS composite used in PAD 238) as the inclusion of Chinese prices in this Asian MEPS price does not lead to a conclusion that the Asian prices are distorted.⁹⁵
- Before it can conclude that Chinese domestic stainless steel coil prices are inadequate, the Commission must examine:
 - How GOC interventions affect pricing in the Asian market;
 - Whether effective competition in the international market has forced Chinese exporters to raise their prices to an international level;
 - The market share of Chinese exports in the Asian market;
 - Whether the thickness of US products (0.10”), which is different from Asian products, affects comparability;
 - Whether Tasman mainly use stainless steel coil from Japan or other Asian suppliers.⁹⁶
- The MEPS Asian price is the most appropriate benchmark, as both China and Australia are part of this market and Tasman itself sources stainless steel from Asian.⁹⁷

The Commission has considered all of the above, in so far as considered relevant, in light of the information readily available to the Commission and the lack of relevant information provided by the GOC that was requested by the Commission in the Government Questionnaire and deemed necessary for fully assessing some of the above claims.

⁸⁹ Komodo, *Submission on Particular Market Situation in China*, 22 July 2014.

⁹⁰ Komodo, *Submission on Particular Market Situation in China*, 22 July 2014.

⁹¹ Komodo, *Submission on Particular Market Situation in China*, 22 July 2014.

⁹² Komodo, *Submission on Particular Market Situation in China*, 22 July 2014.

⁹³ Komodo, *Submission on Particular Market Situation in China*, 22 July 2014.

⁹⁴ Tasman, *Submission in response to Abey Submission*, 10 June 2014.

⁹⁵ Jiabaolu, *Comments on Exporter Visit Report*, 17 September 2014.

⁹⁶ Jiabaolu, *Comments on Exporter Visit Report*, 17 September 2014.

⁹⁷ Jiabaolu, *Comments on Exporter Visit Report*, 17 September 2014.

VI(iv) BENCHMARK ESTABLISHED

STARTING POINT – INTERNAL BENCHMARKS

In line with the guidelines present in the Act and SCM Agreement, the Commission has examined internal benchmarks in China as the possible first option for determining adequate remuneration for stainless steel coil in China.

The Commission considers that the two available internal benchmarks in China that could possibly be used are private prices from non-SIE stainless steel coil producers, and import prices of stainless steel coil to China.

Private prices

In establishing a benchmark price for stainless steel coil reflecting adequate remuneration, the Commission has first considered whether prices from private enterprises in China were an appropriate basis for this benchmark.

However, the Commission's assessment of the Chinese stainless steel market has found the entire market for stainless steel in China to be affected by significant influence by the GOC during (and prior to) the investigation period. This assessment is outlined in Non-Confidential Appendix 3 of this SEF.

It is considered that these GOC influences on the Chinese stainless steel coil market have had a distorting effect on the market overall, and hence have distorted prices throughout the entire market. It is noted that this distortion is considered to have affected the entire Chinese stainless steel coil market, and has therefore distorted all prices in that market, whether they be from SIEs or private enterprises. For this reason, the Commission considers that all prices of stainless steel coil in China (regardless of whether the material was manufactured by an SIE or not) to not be suitable in determining adequate remuneration for stainless steel coil in China, as both private and SIE prices are distorted.

The distortions observed in the Chinese stainless steel coil market as a result of GOC influence is another example of where market distortion makes private domestic prices unsuitable for determining adequate remuneration, hence providing for the use of external benchmarks.

Import prices

The Commission has considered whether it would be suitable to use imported stainless steel coil prices into China as an appropriate in-country benchmark.

In the absence of a complete response to the Government Questionnaire for this investigation, the Commission does not possess statistics relevant to assessing import penetration of stainless steel in the Chinese domestic market (noting that Komodo has submitted unverified importation figures that the Commission has been unable to assess the veracity of). However, preliminary assessment of the data of Chinese exporters show that all stainless steel purchased by these exporters was domestically-manufactured in China, indicating that imported stainless steel is not common in China.

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The Commission considers that, due to the potentially small quantity of imports of stainless steel, it is likely that import prices were equally affected by the government influences on domestic prices. The Commission considers that import prices are not suitable for determining a competitive market cost of stainless steel.

EXTERNAL BENCHMARKS

Having determined that internal benchmarks in China are not appropriate for determining a benchmark to represent adequate remuneration for stainless steel coil in China, the Commission has turned to possible external benchmarks.

Several such external benchmarks have been submitted to the investigation as viable options, including:

- a MEPS world composite price;
- Australian import prices of Thai stainless steel coil;
- the MEPS Asian stainless steel coil price; and
- Tasman's own stainless steel purchase prices.

Benchmark chosen

After determining that internal benchmarks in China are not appropriate for determining adequate remuneration for stainless steel coil in China, the Commission has determined that an appropriate benchmark for stainless steel costs in China is a composite of monthly North American and European 304 grade stainless steel coil prices for the investigation period, as published by MEPS.

The Commission considers this is the best available benchmark option open to it for the purposes of this investigation, the reasons for which are outlined below.

Tasman's application benchmark

As outlined above, Tasman's application submitted that a MEPS 'world composite price' that averaged Asian, European and North American 304 grade stainless steel coil prices (converted to AUD from the reported currency using published rates from the Reserve Bank of Australia (RBA)) would be an appropriate benchmark.

In its Consideration Report for this investigation, the Commission considered this MEPS price, and determined:

While the Commission is aware of other known sources of cold-rolled stainless steel price data (such as SBB, as noted above), the use of MEPS data is considered reasonable for the purposes of the application, being a reputable source of steel pricing data and supported by the CBSA in the investigation into sinks. The suitability of MEPS data and other available data sources will be considered during the investigation.

For the purposes of the findings in this report, the Commission continues to consider that MEPS published prices are appropriate for use in determining a reasonably competitive price for 304 grade stainless steel coil.

Exclusion of Asian prices

The Commission's assessment of the 'world composite' price put forward by Tasman in its application has found that the Asian prices included in this composite include Chinese domestic prices. The findings in this report are that the Chinese price of stainless steel coil is not representative of adequate remuneration for stainless steel coil.

Consequently, the Commission considers that any benchmark that it adopts must necessarily not include this Chinese data, as to do would contaminate the benchmark with prices that are not considered to be reasonable for the purposes of this report.

It follows that the Commission does not consider that submissions by interested parties that the MEPS Asian stainless steel coil price should be used as the benchmark for stainless steel coil in China are reasonable in the circumstances.

Consequently, the Commission has derived a monthly MEPS composite price for 304 grade stainless steel coil using the monthly reported MEPS North American and European prices alone (excluding the Asian price). This was calculated using the monthly reported data available from MEPS at <http://www.meps.co.uk/>.

Inclusion of North American prices

One selected exporter highlighted that the MEPS North American price represents a thicker gauge of steel than that used to manufacture deep drawn stainless steel sinks in China, and queried the impact of this on the benchmark. It is the Commission's understanding, based on discussions held with interested parties during this investigation and resulting from its investigations into other carbon steel-based flat products (such as hot-rolled coil), that the thinner the steel supplied in coil form the more expensive it is. This leads the Commission to consider that including a thicker gauge of North American steel MEPS price in its composite has not resulted in an unduly high benchmark.

Reasons for Selecting Chosen Benchmark

In choosing a MEPS composite European and North American price benchmark, the Commission considers such a benchmark to be the most reasonable of the available options in the circumstances. This takes into account:

- data availability;
- the Commission's understanding of what is included in the data; and
- the characteristics of other available options and their own relative suitability.

As noted above, the Commission considers that MEPS Asian price includes Chinese domestic prices, already determined to not be representative of adequate remuneration and hence not suitable for inclusion (in any capacity) in the benchmark adopted by the Commission.

The Commission considers that the prices actually incurred by Tasman in its own purchases of stainless steel for its own production are likely not to be reasonably representative of a weighted average market price, predominantly being prices from one major supplier to one Australian customer. Further, there is no persuasive evidence to indicate why an import price into Australia would be more reasonable as a benchmark than European or North American domestic prices.

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Thai import prices into Australia may also not be the best available option for a benchmark for 304 cold rolled stainless steel in China because the relevant tariff classification for this input includes not only 304 cold rolled stainless steel, but all forms of stainless steel. The Commission is not in possession of a sufficient understanding of these different grades of stainless steel and their comparability or suitability for inclusion in a benchmark price for 304 cold rolled stainless steel.

In light of the above, the Commission considers that the chosen MEPS composite benchmark is the most reasonable benchmark, considering the information readily available to the Commission in relation to this investigation.

Adjustments to the benchmark

Having determined that the MEPS world composite (European and North American) price is the most appropriate benchmark in this case, the Commission has examined the need to make adjustments to the benchmark to account for the provisions of the Act, *SCM Agreement* and to ensure a reasonable comparison between the stainless steel coil purchased by exporters of the goods and the MEPS price (in particular, relating to delivery terms and slit vs unslit product purchases).

Differences in quality, availability, or marketability

The Commission considers that there is not sufficient evidence on the record to consider that any adjustment needs to be made to its benchmark to account for differences in quality, availability, or marketability as evidence has not been presented to suggest significant differences between these matters in China and European and North American MEPS prices used in determining its composite benchmark.

Comparative advantage

The Appellate Body commented in the WTO dispute *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada* (DS257), which examined less than adequate remuneration in terms of Article 14(d) of the *SCM Agreement*, at Paragraph 109 that:

It is clear, in the abstract, that different factors can result in one country having a comparative advantage over another with respect to the production of certain goods. In any event, any comparative advantage would be reflected in the market conditions prevailing in the country of provision and, therefore, would have to be taken into account and reflected in the adjustments made to any method used for the determination of adequacy of remuneration, if it is to relate or refer to, or be connected with, prevailing market conditions in the market of provision.

The Commission observes this apparent need to adjust for comparative advantage when using an external benchmark in most circumstances. However, the Commission considers such an adjustment is not reasonable or warranted in this case.

Firstly evidence exists to show that China does not have an unfettered comparative advantage in producing steel products and the upstream raw materials of these products (such as stainless

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steel coil). Multiple identified GOC policies, plans and measures examined in previous ACBPS and Commission investigations into Chinese steel products identify that China's iron and steel industry lacks advantageous conditions.

For example, the State Council's 2009 *Blueprint for Steel Industry Adjustment and Revitalization* (the Revitalization Plan) highlights many downfalls of the Chinese iron and steel industry:

... the problems of the steel industry, which have been accumulated during the extensive development in the past, have been more troublesome than ever. (1) Blind investment based on misperception of market demands and overexpansion of aggregate capacity. Until the end of 2008, the production capacity of crude steel exceeds the actual demands for about 100 million metric tons. (2) Weak in innovation. The research and development and application of advanced production technology and high-end products are mainly relied on importation and imitation. Some of the superior quality and key steel products still request numerous import while the structure of consumption maintains at a low level. (3) Poor geographical location of production capacities. Most production facilities and steel enterprises are located in large and medium-sized inland cities, where production are poorly conditioned and seriously restricted in the terms of environmental absorbing capacity, water resource, transportation and energy supplies; (4) Low concentration rate. The average production capacity of crude steel is less than 1 million metric tons. Top 5 producers account only 28% of total production nationwide; (5) Weak in resource reserve. Domestic endowment of iron ore resource is low and the degree of self-sufficiency is less than 50%. (6) Disorder in circulation markets. More than 150,000 vendors are in the steel market. There is serious tendency to speculate on the markets.

It is considered this provides evidence to suggest that, if anything, China may have a comparative disadvantage in certain areas when it comes to producing stainless steel coil and upstream inputs.

Secondly, in certain areas where China has developed (or is developing) a comparative advantage in producing stainless steel coil , this has been heavily influenced by GOC activities in the Chinese iron and steel markets (by way of policies, plans and implementing measures).

The Commission considers that, in this way, at least some of whatever comparative advantage Chinese stainless steel coil producers may have, is likely to have been created by GOC influence (and hence should not be adjusted for in any case).

Delivery terms

The MEPS European and North American prices used to determine the world composite benchmark for the purposes of this report are ex-works or undelivered prices. However, the purchases of stainless steel coil by the selected exporters were made at delivered and ex-works terms.

To arrive at an ex-works benchmark price, the Commission has used the verified annual weighted average delivery cost of stainless steel coil from one selected exporter (being the only exporter whose data allowed for this isolation and comparison) to arrive at a per tonne stainless steel coil delivery cost in China.

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This delivery cost has been added to the MEPS benchmark price to arrive at an ex-works benchmark price.

It is considered that this delivery cost to be reasonable as it reflects verified, actual delivery costs for stainless steel coil incurred in China.

Slitting costs

The MEPS European and North American prices used to determine the world composite benchmark for the purposes of this report are prices for stainless steel coil provided in coil form (i.e. not pre-slit for use in the manufacturing process).

The Commission has observed that Chinese exporters of the goods have made purchases of both slit and unslit (coil) stainless steel coil during the investigation period. It is understood that the process of slitting coil incurs an additional charge to be incurred by the exporter.

For the purposes of exporter Exporter Visit Reports, the Commission determined a slitting cost extra to adjust the MEPS composite price based on a contractual price between one exporter and a supplier of slit and unslit 304 stainless steel. However, in its submission dated 17 September 2014, Jiabaolu contended that this contracted price may not reflect the commercial reality of the slitting costs incurred by exporters, and instead submitted that the Commission use the actual verified difference in prices incurred.

The Commission has therefore determined a per tonne adjustment to the MEPS benchmark price to arrive at a benchmark for slit 304 stainless steel, based on the annual average verified price difference between slit and unslit product purchased at the same time by the same exporter from the same supplier of slit and unslit stainless steel (being the only exporter whose data allowed for this isolation and comparison).

CONCLUSION

The Commission considers that, in assessing whether the provision of stainless steel coil in China by SIEs was for less than adequate remuneration a benchmark determined as a composite (average) price of MEPS European and North American stainless steel prices should be used to compare with exporters' purchase prices of stainless steel coil from SIEs.

This benchmark should be adjusted in line with the following (where appropriate):

- the verified delivery costs of stainless steel coil in China to arrive at a delivered benchmark; and
- the verified per tonne stainless steel coil slitting extra cost incurred by Chinese manufactures of the goods when purchasing those raw materials.

NON-CONFIDENTIAL APPENDIX 11 - PREVIOUS ASSESSMENTS OF PARTICULAR MARKET SITUATION AND RAW MATERIALS COST REASONABLENESS – CHINESE STEEL PRODUCTS

The below outlines the Commission's (or its predecessor, ACBPS) previous findings in relation to the existence of a particular market situation in relation to certain Chinese carbon-steel based goods, as well as the assessment of the reasonableness of raw material costs in constructing normal value under s.269TAC(2)(c).

Hollow structural sections (HSS)

The issue of a market situation in China was considered by ACBPS in Report No 177 (REP177) in regards to HSS exported from China during the investigation period of 1 July 2010 to 30 June 2011. In REP177 it was established that:

- the GOC had exerted numerous influences on the Chinese iron and steel industry, which are likely to have materially distorted competitive conditions within that industry and affected the supply of HSS, HRC, narrow strip, and upstream products and materials; and
- these GOC influences in the Chinese iron and steel industry have created a 'market situation' in the domestic HSS market, such that sales of HSS in that market are not suitable for determining normal value under s.269TAC(1).

Specifically, REP177 examined the existence of macroeconomic policies and plans relevant to the Chinese iron and steel industry⁹⁸ and found evidence of numerous implementing measures put in place by the GOC⁹⁹ that have impacted the Chinese iron and steel industry, leading to the finding that:

... Customs and Border Protection's analysis of the information available indicates that prices of HSS in the Chinese market are not substantially the same (likely to be artificially low), as they would have been without the GOC influence. Customs and Border Protection considers that GOC influences in the Chinese iron and steel industry have created a 'market situation' in the domestic HSS market, such that sales of HSS in that market are not suitable for determining normal value under s.269TAC(1).

Having made this assessment, REP177 goes on to find that the identified GOC influences have likely impacted the costs of certain inputs into the HSS manufacturing process such that they no longer reasonably reflect competitive market costs. ACBPS determined that this was most pronounced in relation to HRC (the major raw material for HSS), and the costs incurred by exporters for HRC was subsequently replaced by a competitive market cost.

REP203 (the reinvestigation into HSS) affirmed the findings of REP177 in relation to these matters.

Aluminium zinc coated steel and zinc coated (galvanised) steel

⁹⁸ Such as the National Steel Policy, the *Blueprint for Steel Industry Adjustment and Revitalisation Directory Catalogue* and national and regional five year plans/guidelines

⁹⁹ Including the imposition of taxes, tariffs, and export quotas; measures to eliminate certain steelmaking capacity; market entry criteria; and directed mergers and restructuring.

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The issue of a market situation in the Chinese aluminium zinc coated steel and galvanised steel markets was considered in Report No 190 (REP190) in relation to the investigation period of 1 July 2011 to 30 June 2012.

In REP190, it was considered reasonable to find that GOC influences in the Chinese iron and steel industry identified in REP177 continued to exist throughout investigation 190's investigation period. It was further found that the findings of REP177 in relation to the Chinese iron and steel industry were found to apply to aluminium zinc coated steel and galvanised steel producers in China, and that a particular market situation existed in relation to domestic sales of galvanised steel and aluminium zinc coated steel.

As was the case with REP177, REP190 found that these GOC influences had also impacted the reasonableness of certain costs incurred by aluminium zinc coated and galvanised steel in China such that they were no longer considered reasonably competitive market costs, and were replaced by a competitive market cost.

Hot rolled plate steel

The Commission considered the existence of a market situation in the Chinese hot rolled plate steel market in Report No 198 (REP198) relating to the investigation period 1 January 2012 to 31 December 2012.

Appendix 1 to REP198 finds:

The Commission has determined that the GOC has exerted numerous influences on the Chinese iron and steel industry, which have substantially distorted competitive market conditions in the iron and steel industry in China.

In the current investigation, based on available information, the Commission determined that various GOC influences identified in INV 177 and again in INV 190 continued to apply in the Chinese iron and steel industry. These were in the form of broad, overarching GOC macroeconomic policies and plans that outline aims and objectives for the Chinese iron and steel industry and more specifically the 'implementing measures' that go towards actively executing the aims and objectives of these policies and plans.

The impact of the GOC's numerous broad and extensive overarching macroeconomic policies and plans, outlining the aims and objectives for the Chinese iron and steel industry, have not been insignificant. The various countervailable subsidies provided by the GOC have also influenced the costs of production of plate steel in China. The various taxes, tariffs, export and import quotas have influenced the price of raw materials used in production of plate steel which has led to a distortion in the selling prices of the plate steel itself.

The Commission's assessment and analysis of the available information indicates that prices of plate steel in the Chinese market are not substantially the same as they would have been without the influences by the GOC. The Commission considers that GOC influences in the Chinese iron and steel industry have created a 'particular market situation' in the domestic plate steel markets such that sales of plate steel in China are not suitable for determining normal value under s.269TAC(1) of the Act.

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As with REP177 and REP190, REP198 found that the reasonableness of certain costs incurred by exporters were impacted by the GOC influences, and competitive market costs were adopted for these costs instead.

Wind towers

The question of a market situation in relation to the Chinese domestic market for wind towers (which are manufactured from hot rolled plate steel) was considered in Report No 221 (REP221) in relation to the investigation period 1 January 2012 to 30 June 2013. However, in REP221 the Commission considered that domestic sales of Chinese wind towers were not suitable for determining normal values under s.269TAC(1) in any case, due to there being an absence of relevant sales of like goods on the domestic market in China, in line with s.269TAC(2)(a)(i) of the Act.

For this reason, REP221 did not make conclusions as to the existence of a particular market situation in the Chinese wind towers market as this was not relevant in the circumstances.

However, REP221 did go on to consider whether the costs of hot rolled plate steel incurred by Chinese exporters of wind towers reasonably reflected competitive market costs for the purposes of Regulation 180. REP221 found that, having regard to the findings of previous anti-dumping investigations where it was found that the GOC exerted significant influence on the Chinese iron and steel industry, sufficient evidence existed to find that the cost of plate steel (and flanges) reflected in the records of Chinese manufacturers do not reasonably reflect a competitive market cost for that input. This cost was subsequently substituted by a competitive market cost.