

IN THE AUSTRALIAN ANTI-DUMPING COMMISSION

**CERTAIN DEEP DRAWN STAINLESS STEEL SINKS
EXPORTED FROM THE PEOPLE’S REPUBLIC OF CHINA**

The Goods

TASMAN SINKWARE PTY LTD

Australian industry

**SUBMISSION OF THE AUSTRALIAN INDUSTRY IN RESPONSE TO
STATEMENT OF ESSENTIAL FACTS NO. 238**

Date of Document: 12 January 2015

Lodged on behalf of: The Australian industry

Tel: 08 8348 6439

Email: m.watters@oliverisinks.com.au

Prepared by: Tasman Sinkware Pty Ltd
51 Naweena Road
Regency Park SA 5010

This submission is made on behalf of the Australian industry producing certain deep drawn stainless steel sinks in Australia, specifically the applicant to *Dumping and Countervailing Investigation ADC 238*, Tasman Sinkware Pty Ltd.

The Australian Industry makes this submission in response to Statement of Essential Facts No. 238 (SEF) published on behalf of the Australian Anti-dumping Commission (**Commission**). References to paragraphs follow the paragraph numbering in the SEF.

ERRORS OF FACT

At the outset, the Australian industry identifies the following errors of fact in the SEF:

Section 9.5.4 Other Matters

At page 80, the SEF states:

“... and the company has thus been operating at its full production capacity throughout the period (verified in the Australian Industry Visit Report).”

This statement is incorrect, and is unsupported by the *Australian Industry Visit Report*. The sentence should read that the “company has not been operating at its full capacity”.

Non-Confidential Appendix 1 Commission's Assessment – Cleaner's Sinks, Production Likeness

At page 111, the SEF states:

“... the Commission considers that the Australian industry does not produce ‘like goods’ to lipped laundry tubs.”

The reference here to “lipped laundry tubs” should be to “cleaner’s sinks”, so that there is consistency between the text and the section sub-heading title.

Non-Confidential Appendix 1 Commission's Assessment – Hand Wash Basins, Production Likeness

Page 114, the SEF states:

“... the Commission considers that the Australian industry does not produce ‘like goods’ to lipped laundry tubs.”

The reference here to “lipped laundry tubs” should be to “hand wash basins”, so that there is consistency between the text and the section sub-heading title.

ASSESSMENTS NOT CORRECT AND PREFERABLE VIEW

Section 3 The goods and like goods

The Australian industry supports the view of the Commission in their assessment that Individually Imported Lipped Laundry Tubs (IILLT) are the goods and therefore are subject to anti-dumping measures. Therefore, in assessing the status of the Free Standing Laundry Unit (FSLU) the key point of difference under determination is the role of the so-called ‘cabinet’ itself. It is the opinion of the Australian industry that the Commission has not given the appropriate level of consideration to some key points.

The underlying assessment and reasoning of the Commission to exclude the FSLU seems to be based on the incorrect statement that the ‘laundry cabinet’ is not an accessory. The Commission has concluded that the ‘cabinet’ makes the IILLT “usable at all” as opposed to making the “product more useful” (p. 106) and is “an essential element to enable the product to be functional” (p. 106). Additionally, the Commission has deemed the cabinet to be “considered essential elements” (p. 106) and that “these products are of no (or very limited) use without these cabinets” (p. 106).

The Australian Industry refutes the position of the Commission by raising the following points:

- All pressed bowl sinks/tubs (regardless of kitchen or laundry application) require installation into a form of cabinetry, be it laminate, marble, stone, wood or pressed metal. All pressed bowl sinks/tubs require this as “an essential element to enable the product to be functional” (p. 106), this statement therefore applies equally to all pressed bowl (sink & laundry) products and is not

limited to FSLU's. So to apply this assessment independently to the sub-category of the FSLU is an incorrect assessment, and an error of fact, being applied by the Commission.

- The provision of a FSLU is simply a more advanced stage of installation to which all pressed bowl (sink & laundry) products must achieve. Therefore, to state that “these products are of no (or very limited) use without these cabinets” (p. 106) is correct, but the statement again applies equally to all pressed bowl (sink & laundry) products and is not isolated to FSLU's only. To argue that the FSLU is only saleable due to the inclusion of the cabinet is to equally argue that every other sink/tub (which is the majority of the market) is not saleable as it does not yet include any form of cabinetry.
- The statement that the cabinet cannot be an accessory because it provides a level of functionality that makes the product “usable at all” is also incorrect. If the Commission were to apply this definition across the sink/tub category and not limit it solely to the sub category of the FSLU cabinet then the following scenarios would also hold true:
 - Taps would be excluded as an accessory of the sink/tub as this water delivery functionality makes the product “usable at all” as opposed to “more useful”. It would be impossible to sell a sink/tub where the consumer has to be convinced to bucket in their water due to the absence of any taps; and
 - Basket wastes (plugs) would also be excluded as an accessory of the sink/tub as this functionality to hold the water in the bowl also makes the product “usable at all” as opposed to “more useful”. Again, consumer would not accept a product where the water was unable to be retained in the bowl and simply flowed directly away.

While the stance accepted by the Commission may apply to some accessories such as drainer baskets, colanders and chopping boards it is not a definitive position that can be applied to all accessories. Therefore, for the Commission to argue levels of functionality between strainers, chopping boards, basket wastes, taps or even cabinets to determine whether they meet the definition of an accessory is intrinsically flawed and a direct contradiction to existing items (as indicated above with taps and plugs) which are already accepted by the Commission within the existing definition of accessories but also make the product “usable” as opposed to “useful”.

- The Commission has noted the FSLU cabinet is an “essential element” as opposed to an accessory which therefore excludes it from the definition of the goods. It is worthy to note that the cabinet itself is not a product which is available for separate purchase without the inclusion of a tub. Submission 085 on the public record from the importer, Milena Australia, clearly supports this position:

“To argue that a free-standing laundry unit is a cabinet with a tub more so than a tub with a cabinet is not correct. A simple proof of this is that the cabinets in question are not on sale without the tub.”

Such an arrangement clearly supports the position that the cabinet is “a thing which can be added to something else” (*Oxford English Dictionary* cited at p. 106) and not visa-versa. Therefore, the inclusion and functionality of the cabinet in the FSLU is clearly secondary to the primary purpose and function which is that of a pressed tub, this again indicates that the cabinet is an added accessory for the tub.

In further support of the opinions expressed above, the Australian industry also raises the issue of circumvention and the risk/opportunity for the avoidance of anti-dumping measures should the Parliamentary Secretary uphold the exclusion of the FSLU from the definition of the goods under consideration. The definition and guidelines provided by the Commission to qualify for the FSLU exclusion is very broad in nature and open to interpretation/manipulation. No specification is given to some of the following factors:

- What type of sink can be brought in with the cabinet? An importer could pack an equal ratio of 1 & ¾ pressed bowl with drainer kitchen sinks with an equal number of flat pack cabinets and apply for the exclusion. A more robust description of the type of sink/tub and its size compatibility with the cabinet is required; and
- What defines a cabinet? An importer could declare a count of a single cabinet wall as a quantity of one (1) and therefore import more sinks/tubs than are applicable to the assembled quantity of cabinets.

Primarily the Australian industry refutes the conclusion that FSLU do not constitute the goods under consideration. However, if this view is upheld by the Parliamentary Secretary, which view is not supported by the Australian industry, but expressly opposed, then the Australian industry insists that a robust definition is expressed, and qualification criteria is provided to ensure that compliance with this definition can be monitored and enforced.

12.2 Forms of measures

The Australian industry notes that the Commission has determined to recommend the Parliamentary Secretary impose anti-dumping measures in the form of *ad valorem* duties.

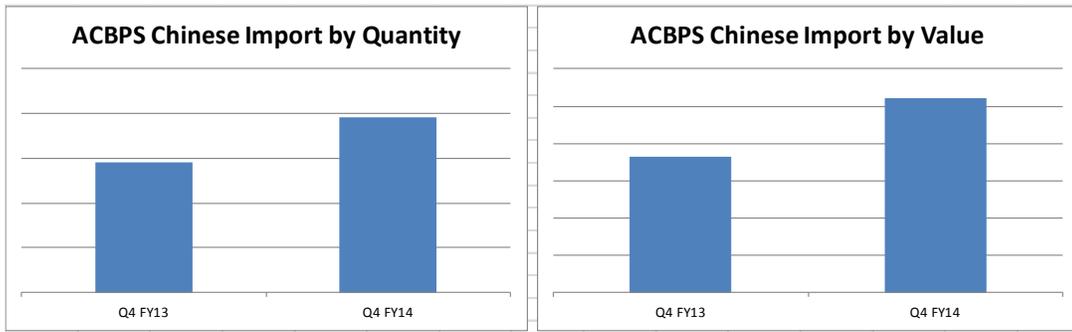
The Australian industry opposes the use of *ad valorem* duties, and prefers the use of the 'combination' method that involves a fixed and variable component of measure for the reason that given the past price behavior of exporters and importers, *ad valorem* duties would be ineffective in deterring exporters from further reducing export prices to dumped and injurious levels.

12.4 Imposition of dumping duties retrospectively

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

The Australian industry disagrees with the Commission's assessment that, (a) the reliability of the ACBPS import data, and (b) other exporter data points to increased import volumes following the initiation of the investigation.

The Australian industry submits CONFIDENTIAL ATTACHMENT 12.4.1, being import statistics for the imported goods, which clearly show a steep incline in the volume of imports following the initiation of the investigation.



Even if the Commission considers that the ABS data's reliability is more removed from the ACBPS data to which it had regard, then the question arises to what extent did the Commission obtain forward order data from the verified exporters, and to what extent did that verified information confirm an increase in export volume? Provided that the trend demonstrated in the Australian industry's ABS data is reflected in the Commission's ACBPS data, then it is entirely open to the Commission to find an injurious increase in import volumes following the initiation of the investigation.

As further evidence of injurious imports following the initiation of the investigation, the Australian industry provides copies of price offers by exporters seeking to take advantage of the market prior to the imposition of duties – CONFIDENTIAL ATTACHMENT 12.4.2, refers.

DATED 12 January 2015

SIGNED:

Tasman Sinkware Pty Ltd
for the Australian industry