



**Australian Government**  
**Anti-Dumping Commission**

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**CUSTOMS ACT 1901 - PART XV B**

**REPORT**  
**NO. 238**

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

**19 February 2015**

**REP 238 Deep Drawn Stainless Steel Sinks - China**

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**ABBREVIATIONS**

\$	Australian dollars
304 SS CRC	304 stainless steel cold-rolled coil
Abey	Abey Australia Pty Ltd
ABS	Australian Bureau of Statistics
the Act	Customs Act 1901
ACBPS	The Australian Customs and Border Protection Service
<i>AD Agreement</i>	World Trade Organisation Anti-Dumping Agreement
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
the applicant	Tasman Sinkware Pty Ltd (Tasman)
AUD	Australian dollar(s)
the Australian industry	Tasman Sinkware Pty Ltd (Tasman)
CBSA	Canada Border Services Agency
China	The People's Republic of China
the Commission	The Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
DS257	WTO dispute Settlement: <i>United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada</i>
DS379	WTO dispute Settlement: <i>United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China</i>
DS436	WTO dispute Settlement: <i>United States – Carbon Steel (India)</i>
DS437	WTO dispute Settlement: <i>United States – Countervailing Measures (China)</i>
DSB	World Trade Organisation Trade Dispute Settlement Body
the Dumping Duty Act	<i>Customs Tariff (Anti Dumping) Act 1975</i>
Everhard	Everhard Industries Pty Ltd
EXW	ex-works
Federal Court	Federal Court of Australia
FIE	foreign-invested enterprise
FOB	Free On Board
Franke	Franke (China) Kitchen System Co. Ltd
FY	financial Year
GAAP	Generally accepted accounting principles
GATT	General Agreement on Tariffs and Trade
GOC	Government of China
GOI	Government of India
the goods	the goods the subject of the application (deep drawn stainless steel sinks)

**PUBLIC RECORD**

<i>Government Questionnaire</i>	the Chinese <i>Government Questionnaire</i> in relation to deep drawn stainless steel sinks
Guangdong Metals	Guangdong Metals and Minerals Import & Export Co., Ltd
GWA	GWA Group Ltd.
HRC	hot-rolled coil
HSS	hollow structural sections
Interim Regulations	<i>Interim Regulations on Supervision and Management of State-Owned Assets of Enterprises</i>
Investigation period	1 January to 31 December 2013
IRMC	International Research and Marketing Corp. Pty. Ltd
Jiabaolu	Zhongshan Jiabaolu Kitchen & Bathroom Products Co., Ltd
Komodo Hong Kong	Komodo Hong Kong Limited (Komodo HK)
Komodo group	Komodo Hong Kong and Komodo Guangzhou (collectively)
Komodo Guangzhou	Guangzhou Komodo Kitchen Technology Co., Ltd.
Korea	Republic of Korea
Logan Arms	Logan Arms Pty Ltd
MEPS	MEPS (International) Ltd
mm	Millimetre
the Minister	The Minister for Industry and Science
NIP	Non-injurious Price
NMDC	National Mineral Development Corporation, India
PAD	Preliminary Affirmative Determination
PAD 238	Preliminary Affirmative Determination Report 238
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry and Science
Primy	Primy Corporation Limited
Productivity Commission	Australian Productivity Commission
R&D	Research and Development
the Regulations	the <i>Customs Regulations 1926</i>
RMB	Chinese Rimi
REP177	Report No 177 regarding Hollow Structural Sections
REP190	Report No 190 regarding Aluminium zinc coated steel and zinc coated (galvanised) steel
REP198	Report No 198 regarding hot rolled plate steel market
REP221	Report No 221 regarding wind towers
REP238	Final Report 238 (this report)
Safeguards Agreement	WTO Agreement on Safeguards
SASAC	China's State-owned Assets Supervision and Administration Commission of the State Council
<i>SCM Agreement</i>	WTO Agreement on Subsidies and Countervailing Measures
SEF	Statement of Essential Facts
SEF 238	Statement of Essential Facts Report 238

## PUBLIC RECORD

SG&A	selling, general and administrative
SGQ	Supplementary <i>Government Questionnaire</i> completed by the Government of China
SHD	SHD Group Pty Ltd (SHD)
SIE	State-invested enterprises
Tasman	Tasman Sinkware Pty Ltd
Shriro	Shriro Australia Pty Limited
Stoddart Manufacturing	Tom Stoddart Pty Ltd
TCO	Tariff concession order
Thailand	Kingdom of Thailand
TMRO	Trade Measures Review Officer
VAT	Value-added tax
WTO	World Trade Organization
Zhongshan Jiabaolu	Zhongshan Jiabaolu Kitchen & Bathroom Products Co., Ltd
Xintian	Zhongshan Xintian Hardware Co., Ltd
Zhuhai Grand	Zhuhai Grand Kitchenware Co., Ltd

## 1 SUMMARY AND RECOMMENDATIONS

This investigation is in response to an application by Tasman Sinkware Pty Ltd (Tasman) in relation to the allegation 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 report (REP238) sets out the findings of the Commissioner of the Anti-Dumping Commission (the Commissioner) and recommendations by the Commissioner to the Parliamentary Secretary to the Minister for Industry and Science (the Parliamentary Secretary) in relation to the application.<sup>1</sup>

### 1.1 Recommendation

The Commissioner 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 Commissioner 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 findings the Commissioner recommends that the Parliamentary Secretary 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).

In addition, the Commissioner has found that like or directly competitive goods to the following sub-sets of the goods are not offered for sale in Australia by Tasman, and hence are eligible for Ministerial exemptions from measures under s. 8(7) and 10(8) of the *Customs Tariff (Anti Dumping) Act 1975* (the Dumping Duty Act):

- deep drawn stainless steel cleaner's sinks; and
- deep drawn stainless steel hand wash basins.

The Commissioner recommends the Parliamentary Secretary use her discretion under the Dumping Duty Act to exempt the above goods from anti-dumping measures.

If the Parliamentary Secretary accepts the Commissioner's recommendations, to give effect to the decision, the Parliamentary Secretary must sign the relevant notices and schedules, under

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<sup>1</sup> The Minister for Industry and Science 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.

s. 269TG(1), 269TG(2) and 269TJ(2) of the *Customs Act 1901*<sup>2</sup> (the Act), and s. 8 and 10 of the Dumping Duty Act .These notices and schedules form **Attachment 1** to this report.

## **1.2 Application of law to facts**

### **1.2.1 Authority to make decision**

Division 2 of Part XVB of 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.

### **1.2.2 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 application.<sup>3</sup>

### **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 appeared 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.<sup>4</sup>

The Commissioner decided not to reject the application, and notice of the initiation of this investigation was published on 18 March 2014.<sup>5</sup>

### **1.2.4 Preliminary Affirmative Determination and securities**

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)<sup>6</sup> to that effect. The PAD did not make preliminary findings in relation to the request for the publication of a countervailing duty notice.

The reasons for making the PAD were contained in *Preliminary Affirmative Determination Report 238* (PAD 238).

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<sup>2</sup> 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.

<sup>3</sup> s. 269TB

<sup>4</sup> s. 269TC(1)

<sup>5</sup> s. 269TC(4)

<sup>6</sup> s. 269TD



When making this PAD, the Commissioner decided to require and take securities<sup>7</sup> 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.

Following the imposition of securities on 13 August 2014, the Commission's further investigations resulted in revisions to the dumping margins calculated for all exporters of the goods from China, at various stages of the investigation.

Following these revised assessments, the Commissioner decided that it was necessary to vary the rate of securities to ensure securities collected were at the most appropriate level as determined at that stage of the investigation.

The level of securities taken was thus adjusted on:

- 24 October 2014; and
- 23 December 2014.

### **1.2.5 Statement of essential facts**

On 23 December 2014, the Anti-Dumping Commission (the Commission) placed its *Statement of Essential Facts No 238* (SEF 238) on the Public Record, on which the Commissioner proposed to base his recommendations to the Parliamentary Secretary concerning the requested publication of a dumping duty notice and a countervailing duty notice in this investigation.

Interested parties were invited to lodge responses to SEF 238 by no later than 12 January 2015. Non-confidential versions of all submissions received are available on the Public Record for this investigation.

Further details of SEF 238 are contained in Section 2.3 of this report.

### **1.2.6 Report 238**

Within 155 days after the initiation of an investigation, or such longer period as the Parliamentary Secretary allows<sup>8</sup>, the Commissioner must give the Parliamentary Secretary a final report in respect of the goods the subject of the application (this report).

Following extensions granted by the Parliamentary Secretary to the due date for the Statement of Essential Facts to be placed on the Public Record, this report was due to the Parliamentary Secretary on or by 19 February 2015.

This report was provided to the Parliamentary Secretary on that date.

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<sup>7</sup> S. 42

<sup>8</sup> If the date by which the SEF must be placed on the Public Record is extended, this extends the date by which the final report is due to the Parliamentary Secretary by a corresponding period – s. 269TC(4)(bf).

### 1.3 Findings and conclusions

The Commissioner has made the following findings and conclusions based on available relevant information.

#### 1.3.1 Australian industry (Chapter 4 of this report)

The Commissioner has found:

- there is an Australian industry producing like goods; and
- Tasman is the only producer of deep drawn stainless steel sinks in the investigation period.

#### 1.3.2 Dumping investigation (Chapter 6 of this report)

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, was not negligible.

The Commissioner found the following dumping margins:

<b>Exporter / Manufacturer</b>	<b>Product dumping margin</b>
Zhuhai Grand Kitchenware Co., Ltd	12.5%
Primy Corporation Limited	5.0%
Zhongshan Jiabaolu Kitchen & Bathroom Products Co., Ltd	15.4%
Jiangmen New Star Hi-Tech Enterprise Ltd.	10.4%
Elkay (China) Kitchen Solutions Co., Ltd.	10.4%
Franke (China) Kitchen System Co., Ltd	10.4%
Xinhe Stainless Steel Products Co., Ltd	10.4%
Guangzhou Komodo Kitchen Technology Co., Ltd.	10.4%
Rhine Sinkwares Manufacturing Ltd. Huizhou	10.4%
Yuyao Afa Kitchenware Co., Ltd	10.4%
Jiangmen City HeTangHengWeiDa Kitchen & Sanitary Factory	10.4%
Uncooperative and all other exporters	49.5%

**Table 1 - Product dumping margins**

#### 1.3.3 Subsidy investigation (Chapter 7 of this report)

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

## PUBLIC RECORD

- 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
- 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:

<b>Exporter / Manufacturer</b>	<b>Product subsidy margin</b>
Zhuhai Grand Kitchenware Co., Ltd	3.3%
Primy Corporation Limited	Negligible
Zhongshan Jiabaolu Kitchen & Bathroom Products Co., Ltd	Negligible
Jiangmen New Star Hi-Tech Enterprise Ltd.	3.4%
Elkay (China) Kitchen Solutions Co., Ltd.	3.4%
Franke (China) Kitchen System Co., Ltd	3.4%
Xinhe Stainless Steel Products Co., Ltd	3.4%
Guangzhou Komodo Kitchen Technology Co., Ltd.	3.4%
Rhine Sinkwares Manufacturing Ltd. Huizhou	3.4%
Yuyao Afa Kitchenware Co., Ltd	3.4%
Jiangmen City HeTangHengWeiDa Kitchen & Sanitary Factory	3.4%
Uncooperative and all other exporters	6.4%

**Table 2 - Product subsidy margins**

As outlined in Table 2, the Commissioner has determined the subsidy margin applicable to exports by Primy and Jiabaolu is negligible, and the Commissioner has terminated the subsidy investigation in so far as it relates to those two exporters.<sup>9</sup>

The reasons for the Commissioner's decision to terminate the subsidy investigation into Primy and Jiabaolu are contained in *Termination Report 238* (TER 238).

#### **1.3.4 Economic condition of the industry (Chapter 8 of this report)**

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.

#### **1.3.5 Have dumping and subsidisation caused material injury? (Chapter 9 of this report)**

The Commissioner has found that dumping and subsidisation of deep drawn stainless steel sinks exported from China caused material injury to the Australian industry (Tasman) producing like goods.

#### **1.3.6 Will dumping and subsidy and material injury continue? (Chapter 10 of this report)**

The Commissioner found:

- exports of deep drawn stainless steel sinks from China in the future may be at dumped prices;
- exports of deep drawn stainless steel sinks from China in the future may be at subsidised prices; and

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<sup>9</sup> s. 269TDA(2)

## **PUBLIC RECORD**

- continued dumping or subsidisation may cause further material injury to the Australian industry.

### **1.3.7 Recommendation**

The Commissioner recommends 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 Application and 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.

The dumping allegations in the application included claims that there was a situation in the domestic Chinese deep drawn stainless steel sinks market that rendered selling prices in that market unsuitable for determining normal values under s. 269TAC(1); and

Following consideration of the application, the Commissioner decided not to reject the application and the Commissioner initiated an investigation into the alleged dumping and subsidisation on 18 March 2014. Public notification of initiation of the investigation was made in *The Australian* newspaper on that day.

As required by s. 269ZJ, the Commission established a Public Record for the investigation on the date of initiation. The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports, and other publicly available documents.

The Public Record is available online at <http://www.adcommission.gov.au/>.

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

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](http://www.adcommission.gov.au), and on the Public Record.

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

#### 2.2.1 PAD 238 and original securities

The Commissioner 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.

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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 (the reasons for this decision were outlined in PAD 238).

In the PAD the Commission preliminarily 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 competitive market costs for stainless steel in China - a benchmark cost for stainless steel can be established using world average stainless steel coil 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.

At that time, 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 continued. 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.

PAD 238, which sets out the reasons for making a PAD, is available on the Commission's Public Record.

### **2.2.2 Revision to securities – post-verification**

Following verification of responses to the *Exporter Questionnaire* received from three selected exporters, the Commissioner amended the preliminary dumping margins for those exporters from those assessed in PAD 238.

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 the securities 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 preliminarily assessed for that exporter in that company's *Verification Visit Report*.

### **2.2.3 Revision to securities – SEF 238 stage**

Following further consideration of submissions received after the 24 October 2014 revision to the Commission made additional revisions to the preliminarily-assessed dumping margins applicable to all exporters in drafting SEF 238.

As these revised dumping margins differed significantly from those assessed in the 24 October 2014 update to securities, the Commissioner decided that it was necessary to again amend the imposed rate of dumping securities being taken while the investigation continued, to align with the revised dumping margins determined in SEF 238.

On 23 December 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 2014/137.

## **2.3 Statement of Essential Facts 238 (SEF 238)**

ADN 2014/20 (the ADN notifying of the initiation of the investigation) advised that SEF 238 was due to be published on the Commission's public record on or before 7 July 2014.

However, due to the complexities of the investigation and the number of interested parties involved, the then Parliamentary Secretary to the Minister for Industry<sup>10</sup> granted the Commissioner two separate extensions to the date by which SEF 238 had to be placed on the Public Record, and these subsequently extended the period of time for provision of this report to the Parliamentary Secretary. The details of these extensions are tabulated below.

<b>Date notified (ADN number)</b>	<b>SEF 238 date extended to</b>	<b>Final report extended to</b>
20 June 2014 (2014/50)	5 October 2014	19 November 2014
7 October (2014/101)	5 January 2015	19 February 2015

**Table 3 – Extensions granted to SEF 238**

On 23 December 2014, the Commission placed SEF 238 on the Public Record, on which the Commissioner proposed to base his recommendation to the Parliamentary Secretary concerning the publication of a dumping duty notice and a countervailing duty notice in this investigation.

Interested parties were invited to lodge responses to SEF 238 by no later than 12 January 2014. Non-confidential versions of all submissions received are available on the Public Record for this investigation.

## **2.4 Report 238**

Within 155 days after the initiation of an investigation, or such longer period as the

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<sup>10</sup> The Parliamentary Secretary to the Minister for Industry was responsible for anti-dumping matters at that stage (this role currently resides with the successor to that role, the parliamentary Secretary to the Minister for Industry and Science).



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Parliamentary Secretary allows, the Commissioner must give the Parliamentary Secretary a final report in respect of the goods the subject of the application (this report).

As outlined above, the Parliamentary Secretary granted two extensions of time for SEF 238 to be placed on the public record, which consequently extended the due date for the final report to the Parliamentary Secretary.

This report's due date for provision to the Parliamentary Secretary was 19 February 2015. This report was provided to the Parliamentary Secretary on that date.

### 2.4.1 Matters considered by the Commissioner in this report

In formulating this report to the Parliamentary Secretary, the Commissioner must have regard to:

- the application;
- any submissions concerning publication of the notice to which the delegate of the Commissioner has had regard for the purpose of formulating SEF 238;
- SEF 238 itself;
- any submission in response to SEF 238 received by the Commission within 20 days after the day that statement was placed on the Public Record; and
- any other matters considered relevant.<sup>11</sup>

The due date for submissions in response to SEF 238<sup>12</sup> was 12 January 2012. In accordance with s. 269TEA(3), the Commissioner is not obliged to have regard to submissions received after 12 January 2012 if to do so would, in the Commissioner's opinion, delay the timely preparation of this report to the Parliamentary Secretary.

The following submissions were received in response to SEF 238:

Party	Submission title/description	Date received
Tasman	Response of the Australian industry to the exporters' submission no. 096 To the statement of essential facts no. 238 (price undertaking response)	15 January 2015
Tasman	Submission of the Australian industry in response to Statement of Essential Facts No. 238	12 January 2015
Zhuhai Grand	ADN 238 – Antidumping and Countervailing Investigation of Certain deep drawn stainless steel sinks originating in the People's Republic of China	12 January 2015
Jiabaolu	Comments on Statements of Essential Facts (No.238) and the proposal of price undertaking	12 January 2015
Primy Corporation	Statement of Essential Facts Submission on Dumping Margin Calculation	7 January 2015
Komodo Group	Submission on Statement of Essential Facts	31 December 2014

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<sup>11</sup> s. 269TEA(3)

<sup>12</sup> 20 days after the placement of SEF 238 on the Public Record

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Tom Stoddart <sup>13</sup> Pty Ltd	Application for a Ministerial Exemption – Cleaner's sinks pursuant to TC 1436584 & Hand Wash Basis pursuant to TC 1436587	4 February 2015
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**Table 4 – Submission received in response to SEF 238**

In addition, prior to releasing SEF 238 the Commission received the following submission that the Commissioner was not able to consider for the purposes of SEF 238 (as it would have delayed the publication of the SEF). This submission has been taken in to account in formulating the recommendations in this report.

Party	Submission title/description	Date received
GWA Group Ltd.	Supplementary submission regarding use of Stainless Steel Benchmark prices for the purposes of construction normal values	19 December 2014

**Table 5 – Submission received prior to SEF 238 but not considered in that statement**

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<sup>13</sup> This submission was received after the 12 January 2015 deadline. However, the Commissioner has been able to have regard to it in formulating this final report.

### 3 THE GOODS AND LIKE GOODS

#### 3.1 Finding

The Commissioner considers that locally produced deep drawn stainless steel sinks are like to the goods the subject of the application (the goods – see below description).

The Commissioner 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 Commissioner 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 Commissioner recommends that the Parliamentary Secretary exercise her discretion under the Dumping Duty Act to exempt hand wash basins and cleaner's sinks from the anti-dumping measures recommended in this report.

#### 3.2 The goods

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

The rate of customs duty payable is 5%.

### **3.4 Like goods legislation and framework**

S. 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.

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

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*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, in line with the established policy and practice outlined in the Commission’s *Dumping and Subsidy Manual*.<sup>14</sup>

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

### 3.5 Like goods assessment

From available information, the Commissioner 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 Commissioner 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.

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<sup>14</sup> Available online at <http://www.adcommission.gov.au/reference-material/manual/default.asp>

iii. Functional likeness:

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 Commissioner 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 Commissioner has received submissions from various interested parties throughout the investigation relating to particular imported goods that it is claimed 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 granted a ministerial exemption from measures under the Dumping Duty Act due to the Australian industry not producing like or directly competitive goods to those imports - this includes two separate formal requests for a ministerial exemption lodged by Abey Australia Pty Ltd (Abey) on 13 October 2014, and Tom Stoddart Pty Ltd (Stoddart Manufacturing) on 4 February 2015.

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 Commissioner has 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 Commissioner does not recommend to the Parliamentary Secretary that she grant an exemption from anti-dumping measures in relation to these products.

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- 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. The Commissioner does not 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. The Commissioner recommends to the Parliamentary Secretary that she exercise her discretion under the Dumping Duty Act to exempt cleaner's sinks and hand wash basins from anti-dumping measures recommended in his report.

## 4 THE AUSTRALIAN INDUSTRY

### 4.1 Finding

The Commissioner 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.

S. 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).



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Based on the above, the Commissioner 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 Commissioner 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 Finding

The Commissioner considers that the Commission is unable to accurately assess the market size of the Australian deep drawn stainless steel sinks industry for the purposes of this report. 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 conclusions relevant to these matters. The lack of reliable market size data therefore has limited bearing on the findings in this report.

### 5.2 Background

The Commissioner understands that the deep drawn stainless steel sink market in Australia is primarily driven by the residential construction (new dwellings) and renovations sector. The market is supplied by imports from China, the Kingdom of Thailand (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, as outlined in the *Australian Industry Verification Report* (available on the Public Record).

#### 5.3.2 Importers

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

Out the outset of the investigation, the Commission identified six 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 drawn stainless steel sinks for each financial year (FY)<sup>15</sup> 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*. This sales data was found to be reasonably complete, relevant and accurate.

For the purposes of the investigation, the Commission compared the import volumes in the application to data in the Australian Customs and Border Protection Service's (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 Commissioner considered the ABS data to be reasonably accurate for the purposes of the consideration report for the investigation (*Consideration Report 238 (CON 238)*).

Since initiation of the investigation, the Commissioner 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) - as outlined in Section 3.6, the Commissioner has determined that free-standing laundry units (imported as either kits or fully assembled) are not the goods; and
- a significant volume of fabricated sinks in the ACBPS data.

Neither of these products are the goods subject to this investigation.

In its investigations with major importers of goods under the relevant tariff classifications, the Commissioner 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 Commissioner considers that the ACBPS import data and submitted ABS data include large volumes of irrelevant data (i.e. imports of products that are not deep drawn stainless steel sinks), and is therefore of limited use without eliminating the data relevant to these products.

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 Commissioner 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 Commissioner considers that the Commission is unable to accurately assess the market size of the Australian deep drawn

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<sup>15</sup> Being 1 July to 30 June.

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stainless steel sinks industry for the purposes of this report. The Commissioner is therefore unable to make accurate observations as to market size and share over the injury analysis period.

The Commissioner considers that the above impacts the accuracy of the Commission's assessment as to whether the volume of dumped and subsidised 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 Commissioner has examined other indicators to develop an understanding of import volumes and market size trends over the injury analysis period, allowing him to make conclusions relevant to these matters. Consequently, the lack of reliable market size data has limited bearing on the findings in this report.

## 6 DUMPING INVESTIGATION

### 6.1 Finding

The Commissioner has found 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 search of the ACBPS import database identified approximately 230 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 in the Chinese deep drawn stainless steel sinks market.

After notifying suppliers of the opportunity to cooperate with the investigation through completion of the *Exporter Questionnaire*, the Commission received 17 (one of which was a combined exporter/trader response,<sup>16</sup> hence responses were received from 18 separate parties).

#### 6.2.3 Government Questionnaire

At the time of initiating the investigation, the Commission contacted the Government of China (GOC) to notify them of the investigation.

As the investigation involved considerations of:

- the existence of a market situation in the Chinese deep drawn stainless steel sinks market (see Section 6.7); and

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<sup>16</sup> Komodo Group.

- receipt of countervailable subsidies by Chinese exporters of the goods (relevant to the assessment of subsidisation, see Chapter 7)

the Commission forwarded the GOC a *Government Questionnaire* with questions relevant to assessing these matters.

A response to the *Government Questionnaire* was received from the GOC on 19 May 2014. However, this response was limited and incomplete. In particular, Section B (which asked the GOC for information pertinent to addressing allegations of market situation) was not addressed fully by the GOC.

### **6.3 Categorisation of exporters - sampling**

As provided by s. 269TACAA, following receipt of the 17 completed *Exporter Questionnaires* (18 parties), the Commissioner determined that it was appropriate to limit the number of exporters individually examined as part of the investigation to a sample of three exporters, as it was not considered practicable to examine the exports of all responding exporters. The percentage of the export volume to Australia represented by these three exporters is around 40%.

The Commission classified all exporters from China other than the three named 'selected exporters' as either:

- residual exporters; or
- uncooperative or all other exporters.

The Commissioner has, as provided under s. 269TACAA, used the information analysed for the sampled exporters to make findings as to whether all residual and uncooperative (and all other) all other exporters have sold the goods to Australia at dumped prices, and whether these exporters were in receipt of countervailable subsidies.

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 investigation's *Sampling Report* on the Commission's Public Record.

Prior to and following the publication of SEF 238, 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 this report (see below discussion).

#### **6.3.1 Selected exporters**

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

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SELECTED EXPORTERS
Zhuhai Grand Kitchenware Co. Ltd. (Zhuhai Grand)
Primy Corporation Limited (Primy)
Zhongshan Jiabaolu Kitchen and Bathroom Products Co Ltd (Jiabaolu)

**Table 6 – Selected exporters**

This sample represented those exporters that were responsible for the highest volume of exports that the Commissioner 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 Visit Reports* for each of the exporters are available on the Public Record.

The Commissioner 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

s. 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:*

- (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 Commissioner considered 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*) but were not selected as part of the sample (i.e. not one of 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 the three selected exporters (i.e. these residual exporters were not provided with an individual assessment of dumping and subsidisation, but a collective weighted average-based rate was determined).

The entities considered by the Commissioner to be residual exporters are as follows:

<b>RESIDUAL EXPORTERS</b>
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
Rhine Sinkwares Manufacturing Ltd. Huizhou
Yuyao Afa Kitchenware Co., Ltd
Jiangmen City HeTangHengWeiDa Kitchen & Sanitary Factory
Guangzhou Komodo Kitchen Technology Co., Ltd. <sup>17</sup>

**Table 7 – Residual exporters**

### **6.3.3 Uncooperative exporters**

An ‘uncooperative exporter’ is defined under s. 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’.

All exporters that did not submit *Exporter Questionnaires*, or submitted *Exporter Questionnaires* that did not meet the Commission’s requirements, were deemed by the Commissioner to be uncooperative.

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

### **6.3.4 Traders**

The Commissioner has determined that five companies that submitted *Exporter Questionnaires* were actually ‘traders’ rather than exporters, as determined in accordance in line with established policy and practice outlined in the *Dumping and Subsidy Manual*.

The Commissioner did not determine 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.

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<sup>17</sup> See discussion below about classification of this exporter



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

**Table 8 – Trading entities (determined to not be exporters)**

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

Franke (China) Kitchen System Co. Ltd (Franke) – request to receive an individual assessment of dumping

Prior to SEF 238, in a submission dated 18 September 2014, Franke and its associated trading entity Franke Asia Sourcing Ltd, lodged a request that the Commissioner undertake an individual assessment of the dumping margin (and presumably subsidy margin) attributable to exports of the goods by Franke.

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

The Commissioner has determined that it is not reasonable or practicable to comply with this request by Franke. The reasons for this decision are detailed in SEF 238 at Section 6.3.5.

Komodo Group<sup>18</sup> – request to be treated as an ‘exporter’

In PAD 238 and SEF 238, the Commission preliminarily found that:

- Komodo Hong Kong Limited (Komodo Hong Kong) should be considered a ‘trader’ for the purposes of this investigation; and
- Komodo Hong Kong’s Chinese manufacturer, Zhongshan Xintian Hardware Co., Ltd. (Xintian), should be considered the ‘exporter’ of the goods supplied by Komodo Hong Kong.

Both entities completed a cooperative response to the *Exporter Questionnaire*, as did Komodo Hong Kong’s related Chinese entity, Guangzhou Komodo Kitchen Technology Co., Ltd. (Komodo Guangzhou), which was considered by the Commission for the purposes of SEF 238 to be an intermediary in the export transaction.

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<sup>18</sup> Komodo Hong Kong Limited (Komodo Hong Kong) and Guangzhou Komodo Kitchen Technology Co., Ltd.(Komodo Guangzhou) collectively

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As Xintian complied with the requirements of the *Exporter Questionnaire*, it was considered by the Commission to be a 'residual' exporter in PAD 238 and SEF 238.

In various submissions made to the investigation Komodo Hong Kong and Komodo Guangzhou (the Komodo Group) submitted that 'Komodo' (which the Commission understand was intended to refer to the Komodo Group collectively) should be considered by the Commission to be an 'exporter' for the purposes of this investigation.

In submitting that 'Komodo' should be considered to be an 'exporter', Komodo contended that 'Komodo' is 'not just an intermediary' in the export transaction (as assessed by the Commission in the PAD 238 and above in SEF 238), and acts 'more like a distributor' by virtue of such matters as:

- The Komodo Group has ownership and control over the distribution of the goods once they are purchased from the manufacturer. The manufacturer is not aware of the final destination of the goods at the time they are sold to Komodo.
- The Komodo Group knowingly arranges the transportation of the goods to the Australian customer, and is involved in both arranging inland transport to the port and then sea transport to Australia.
- The Komodo Group participates closely in the aspects of the manufacture of the goods, including through involvement in product design, quality assurance, provision of accessories to the manufacturer.
- The Komodo Group manages key aspects of the export transactions for the goods, including establishing a relationship and negotiating directly with the Australian customer, establishing supply arrangements on behalf of the Australian customer (including with the manufacturer and accessories producers).

Following receipt of the above submission, the Commission has reconsidered its position in relation to the classification of entities in the Komodo Group. The Commission has examined the role in the export transaction of both Komodo Hong Kong and Komodo Guangzhou, noting the following arrangements exist as submitted<sup>19</sup> by the Komodo Group in its response to the *Exporter Questionnaire*, submission of 18 August 2014 and submission of 31 December 2014.

In light of this consideration, the Commissioner considers that:

- Komodo Guangzhou should be considered the 'exporter' of deep drawn stainless steel sinks supplied to Australia by the Komodo Group;
- Komodo Hong Kong should be considered a 'trader' of deep drawn stainless steel sinks supplied to Australia by the Komodo Group; and
- Xintian not be considered an exporter of the goods during the investigation period.

The classification of entities outlined in Sections 6.3.2 and 6.3.4 reflects this assessment.

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<sup>19</sup> Response to the *Exporter Questionnaire*, submission of 18 August 2014 and submission of 31 December 2014.

Komodo Group – request for individual dumping assessment

In its submission of 8 September 2014, the Komodo Group requested that 'Komodo' not only be considered an exporter, but a 'selected exporter', extending the Commission's sample of three exporters to include 'Komodo'. A request to use actual sales data submitted by the Komodo Group 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 Commissioner has determined that it is not reasonable or practicable to comply with this request by the Komodo Group and Abey. The reasons for this decision are detailed in SEF 238 at Section 6.3.5.

Logan Arms Pty Ltd (Logan Arms) – request to be subject to the residual rate of anti-dumping measures

In a submission dated 28 August 2014, Logan Arms requested that amendments be made to the dumping securities implemented following the issuing of PAD 238, 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 that applied to the Chinese supplier of Logan Arms' imports (after being considered an 'uncooperative' exporter, failing to submit a response to the *Exporter Questionnaire*).

Although submitted in relation to preliminary dumping securities, it is considered that Logan Arms intends to extend its submission to any interim anti-dumping measures that the Commissioner recommends be imposed by the Parliamentary Secretary.

Logan Arms has not renewed these claims following SEF 238.

In SEF 238, the Commission preliminarily found that the goods imported by Logan Arms from its supplier should remain subject to the 'uncooperative and all other' rate of anti-dumping measures, due to the lack of cooperation of that Chinese supplier with the investigation. The details of Logan Arms' submission and the Commission's analysis of this are at Section 6.3.5 of SEF 238.

The Commission continues to consider Logan Arms' Chinese supplier of deep drawn stainless steel sinks to be an 'uncooperative' exporter, and that the 'uncooperative and all other' rate of anti-dumping measures should apply to this supplier.

SHD Group Pty Ltd (SHD) – request to be considered to have imported undumped goods

In a submission dated 28 April 2014, SHD, an Australian importer, submitted pricing data that it asserts proves that goods it has imported have not been at dumped prices.

A fully completed response to the *Exporter Questionnaire* by SHD's supplier has not been received by the Commission (hence it has been classified as an 'uncooperative' exporter).

The Commissioner is unable to accept the information submitted by SHD as evidence that the goods that company has imported have not been at dumped prices, or to accept the information from SHD in lieu of a full response to the *Exporter Questionnaire* by SHD's supplier (rendering them to have cooperated with the investigation). Further discussion is in SEF 238 at Section 6.3.5.

The Commissioner continues to consider SHD's Chinese supplier of deep drawn stainless steel sinks to be an 'uncooperative' exporter, and that the 'uncooperative and all other' rate of anti-dumping measures should apply to this supplier.

## **6.4 Determining normal values – applicable legislation, policy and practice**

The below provisions and applicable policy and practice are particularly relevant to determining normal values for deep drawn stainless steel sinks exported from China and are referred to in subsequent discussion. Each has been outlined to ensure the clarity of this report.

### **6.4.1 Starting point for normal values – domestic sales of like goods**

S. 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.

This is the legislative 'starting point' for establishing normal values and is the Commission's default approach to normal value unless conditions exist that make this approach unsuitable, irrelevant or unreasonable.

#### Exception to domestic sales – absence or low volume of relevant sales (s. 269TAC(2)(a)(i))

S. 269TAC(2)(a)(i) provides that the normal value of the goods exported Australia cannot be determined under s. 269TAC(1) where the Parliamentary Secretary is satisfied that:

*...because of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under Section (1).*

In these cases, the Act provides that 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 (s. 269TAC(2)(c)) or third country sales (s. 269TAC(2)(d)).

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

#### Exception to domestic sales – market situation (s. 269TAC(2)(a)(ii))

S. 269TAC(2)(a)(ii) provides that, 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 Section (1)*

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the normal value for goods exporter to Australian cannot be ascertained under s. 269TAC(1). That is, where a 'market situation'<sup>20</sup> is present.

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

### 6.4.2 Alternative normal values - constructed or third country sales

Where normal value cannot be determined under s. 269TAC(1) due to the operation of s. 269TAC(2)(a)(i) or (ii), then normal value is to be determined under Section 269TAC(2) where possible, which reads:

*(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; or*

*(d) if the Minister directs that this paragraph applies--the price determined by the Minister to be the price paid or payable for like goods sold in the ordinary course of trade in arms length transactions for exportation from the country of export to a third country determined by the Minister to be an appropriate third country, other than any amount determined by the Minister to be a reimbursement of the kind referred to in s. 269TAA(1A) in respect of any such transactions.*

That is to say, where normal values cannot be determined under s. 269TAC(1) due to the absence of relevant sales or the existence of a market situation, normal value should either be:

- 'constructed' based on the exporters' cost to make and sell and a reasonable amount for profit; or
- determined based on arm's length sales of like goods in the ordinary course of trade to an appropriate third country.

### 6.4.3 Determining costs for use in determining normal values

Whether normal values are determined under either:

- s. 269TAC(1) or s. 269TAC(2)(d) based on sales of like goods made in the ordinary course of trade; or
- under s. 269TAC(2)(c) using a cost to make and sell-based construction

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<sup>20</sup> Sometimes referred to as a 'particular market situation'

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the Commissioner is required to work out exporters' costs in accordance with the conditions of Regulation 180 and 181 of the *Customs Regulations 1926* (the Regulations)<sup>21</sup>.

Of particular note is Regulation 180(2), which requires that, in determining costs of manufacture or production:

- 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 Commissioner may resort to other information to calculate these costs, including substituting incurred costs with reasonably competitive market costs.

### **6.4.4 Determining profit for use in s. 269TAC(2)(c) constructed normal values**

Where constructed normal values are determined under s. 269TAC(2)(c), the amount for profit included in the constructed normal value must be established in accordance with Regulation 181A.<sup>22</sup>

Regulation 181A(2) requires that, where possible, this profit is to be established by using data relating to the production and sale of like goods by the exporter of those goods in the ordinary course of trade.

## **6.5 Determining normal values – 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 s. 269TAC(1) of the Act, as a market situation in relation to those goods renders those domestic selling prices unsuitable.

The application in effect submits that:

1. a market situation exists in the Chinese deep drawn stainless steel sinks market, rendering domestic sales of deep drawn stainless steel sinks unsuitable for determining normal values (s. 269TAC(2)(a)(ii));
2. constructed normal values should be used as a result (s. 269TAC(2)(c));
3. in constructing normal values and determining the cost of manufacture of deep drawn stainless steel sinks in line with Regulation 180(2), the cost of stainless steel does not

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<sup>21</sup> As required by s. 269TAC(5A) and 269TAAD(5).

<sup>22</sup> s. 269TAC(5B)

reasonably reflect competitive market costs for that input (relying on the same influences identified that cause the alleged market situation) and should be substituted with a competitive market cost; and

4. a MEPS world average price is an appropriate price for substituting domestic stainless steel costs.

## **6.6 Determining normal values – applicability of domestic sales**

Before addressing the issue of whether a market situation exists in the Chinese deep drawn stainless steel sinks market that renders domestic sales in that market unsuitable for determining normal values, the Commissioner has assessed whether there was a sufficient volume sales of like goods in arm's length transactions on the domestic market that are relevant for determining normal values under s. 269TAC(1) in the first place.<sup>23</sup>

### **6.6.1 Certain models – Zhuhai Grand**

As outlined in the exporter *Verification Visit Report* of the selected exporter Zhuhai Grand, the Commissioner has found that there were sufficient sales of like goods in the ordinary course of trade that were relevant for determining normal values under s. 269TAC(1) for a small number of models exported by Zhuhai Grand to Australia. In these cases, the Commissioner found that there were sales of the exact same model on the domestic market as was exported to Australia. See the company's exporter *Verification Visit Report* for further details.

The Commissioner has therefore assessed whether a market situation exists that renders these domestic sales unsuitable for determining normal values (i.e. does s. 269TAC(2)(a)(ii) operate in relation to domestic sales). See Section 6.7 for this assessment.

This finding differs from SEF 238, in which the Commission (erroneously) determined that there were no domestic sales of deep drawn stainless steel sinks suitable for determining normal values under s. 2639TAC(1) for any of the exporters.<sup>24</sup>

### **6.6.2 Other exporters and remaining Zhuhai Grand models**

In its investigations with the selected exporters, the Commissioner has determined that for:

- two of the three exporters (Primy and Jiabaolu); and
- the majority of models exported by the third exporter (Zhuhai Grand)

there was an absence of sales of like goods in China that would be relevant for determining normal values under s. 269TAC(1), in accordance with s. 269TAC(2)(a)(i).

This is due to the fact that, during its verification with the selected exporters, the Commissioner observed that:

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<sup>23</sup> As outlined above, if this is not the case, s. 269TAC(2)(a)(i) directs that normal value should not be established using domestic selling prices under s. 269TAC(1).

<sup>24</sup> This finding has led to the Commission preliminarily consider in SEF 238 that a market situation assessment was not necessary as no s. 269TAC(1) normal values applied.

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- there were no exact model matches to all Australian export models sold by Primy and Jiabaolu, and for the majority of models exported by Zhuhai Grand (excluding those discussed above); and
- 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 using a surrogate/substitute model to those exported.

The differences between domestic and exported models of the goods 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 of models that aren't exact model matches to exported goods to make them comparable with export prices.

Details of these assessments are contained in the individual exporter *Verification Visit Reports* for the three selected exporters.

The differences outlined above have also been supported by discussions with importers, and a submission lodged by IRMC 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.

### 6.7 Assessment of market situation

Having determined that sufficient relevant sales of like goods were made on the domestic market in the ordinary course of trade by Zhuhai Grand in relation to certain exported models, the Commissioner has assessed whether a market situation existed in the domestic market of deep drawn stainless steel sinks that rendered those domestic sales unsuitable for determining normal value, in accordance with s. 269TAC(2)(a)(ii).

The Commissioner determines that, during its investigation period, there was not a market situation in the Chinese deep drawn stainless steel sinks market that rendered domestic selling prices of like goods unsuitable for determining normal values under s. 269TAC(1).

This is due the fact that, while the Commissioner considers there has been significant intervention by the GOC in the Chinese domestic steel industry that has rendered the price paid by exporters of deep drawn stainless steel sinks for their key raw material (304 coil rolled stainless steel coil (304 SS CRC)), the Commissioner does not consider that this has had the outcome of rendering domestic selling prices of deep drawn stainless steel sinks themselves unsuitable for determining normal values under s. 269TAC(1).



Consequently, where sufficient relevant domestic sales of like goods have been made in the ordinary course of trade by Zhuhai Grand of exact model matches to exported models during the investigation period, the Commissioner has used these sales prices as the basis for determining normal values under s. 269TAC(1) (see Section 6.6 for further discussion).

The Commission's detailed assessment of whether a market situation exists in the Chinese deep drawn stainless steel sinks market is included in **Non-Confidential Appendix 3**.

## **6.8 Establishing s. 269TAC(2) normal values – third country sales or construction**

As outlined in Section 6.6, the Commissioner has determined that s. 269TAC(2)(a)(i) operates in relation determining normal values for all models of the goods exported by Primy and Jiabaolu, and the majority of models exported by Zhuhai Grand.

Following this determination, the Commissioner has examined the possibility of establishing normal value for these goods using either:

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

In their responses to the *Exporter Questionnaire*, all three selected exporters of the goods have provided:

- aggregate third country sales data (not split into model or in line-by-line detail); and
- detailed domestic and export (to Australia) cost to make and sell 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 s. 269TAC(2)(d) for each exporter. 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 s. 269TAC(2)(c) of the Act in relation to all sales by Primy and Jiabaolu and the non-s. 269TAC(1) models exported by Zhuhai Grand. As required, the Commission has performed this construction so in accordance with the conditions of Regulation 180,181 and 181A of the Regulations (relevant aspects of which are outlined below).

## **6.9 Assessment of costs reasonableness under Regulation 180(2)**

As outlined above, in addressing the normal value of the goods, Tasman's application asserts that, when constructing normal values for deep drawn stainless steel sinks, any construction of

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normal values should take account of the fact that the cost of 304 SS CRC incurred by exporters in China does not reasonably reflect competitive market costs for that input (relying on the same influences identified that cause the alleged market situation) and should be substituted with a MEPS-based average price.

Although not specifically submitted by Tasman in its application (which envisages that s. 269TAC(1) normal values should not be used due to there being a market situation), the Commissioner considers Tasman's allegations of 304 SS CRC costs reasonableness should also extend to the determination of costs used for conducting ordinary course of trade tests when establishing s. 269TAC(1) normal values (as outlined above, some of Zhuhai Grand's exported models have normal values determined under s. 269TAC(1)).

The Commissioner has assessed these claims of the reasonableness of 304 SS CRC costs incurred by Chinese exporters of the goods.

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 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 view is that 304 SS CRC (also supplied in sheet form) prices in China are affected by 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 the reasonableness of stainless steel costs incurred by exporters is contained in **Non-confidential Appendix 4**.

### **6.10 Amending costs incurred – competitive substitute and replacement methodology**

#### **6.10.1 Reasonably competitive market costs substitute**

In light of the above finding that the costs of 304 SS CRC incurred by Chinese exporters of the goods do not reasonably reflect competitive market costs for that input, the Commissioner has considered how best to determine what a competitive market substitute price for this input in China should be, having regard to all available information.

Taking into account all available options for a competitive market substitute, the Commissioner 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 Commissioner has therefore determined that the most reasonable option available is a MEPS-based average price for 304 SS CRC 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/>.

Details of this reasonably competitive market substitute and the assessment of other possible benchmarks are detailed in the Commission's assessment of countervailable subsidies (contained in Non-Confidential Appendix 8).

### **6.10.2 Replacement methodology**

To ensure that the cost of 304 coil-rolled 304 SS CRC used in determining the costs of manufacture or production reasonably reflect competitive market costs for the purposes of ordinary course of trade tests and constructing normal values, the Commissioner compared:

- the benchmark MEPS European and North American average 304 SS CRC prices; to
- verified purchase prices actually incurred by Chinese exporters of deep drawn stainless steel sinks when purchasing this input

to arrive at an individual percentage difference between the benchmark and purchases prices, which was then be applied to the stainless steel costs recorded in the exporters' records.

In performing this calculation, the Commissioner applied the applicable benchmark to the verified purchase data based on the reported delivery and physical state (slit/unslit) or those purchases to ensure a 'like to like' comparison.

In each case, application of the MEPS European and North American average price 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 10%.

The MEPS European and North American average price benchmark forms **Confidential Appendix 5** of this report.

## **6.11 Determination of profit for constructed normal values in China**

### **6.11.1 Approach taken**

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 Commissioner has calculated a weighted average net profit on like goods sold on the domestic market in the ordinary course of trade, measured as a percentage mark-up on full cost to make and sell, for each Chinese selected exporter.

The ordinary course of trade tests undertaken used 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 Commissioner observes that even when the cost of stainless steel raw materials is uplifted, all three selected exporters achieve profits at not insignificant levels.

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This approach is the same to that taken in SEF238, which took into account submissions on profit reasonableness received from Jiabaolu and Zhuhai Grand prior to the issue of SEF238 (refer to Section 6.8 of that statement for discussion of these submissions).

Jiabaolu has made a submission in relation to profited reasonableness in response to SEF238 (discussed below). No other interested party submissions were received in relation to the approach of profit calculations in SEF238.

### 6.11.2 Jiabaolu submission in response to SEF238

As outlined above, Jiabaolu made a submission prior to SEF238 that related to the methodology used by the Commission in determining the company's profit for use in constructed normal values for the purposes of the company's *Verification Visit Report*.<sup>25</sup> After considering that submission for the purposes of SEF238, the Commission did not make any changes to the approach to calculating Jiabaolu's profit for use in constructing normal values in SEF238.

In response to SEF238,<sup>26</sup> Jiabaolu has reiterated its pre-SEF238 submission, stating:

- the profit ratio calculated by the Commission is artificially high, as a result of unreasonable methodologies applied to calculated the company's cost to make and sell including:
  - low scrap offset;
  - issues with attributing rebates;
  - recalculation of the company's model cost; and
  - inclusion of accessories in the dumping calculation
- where there are several competing methodologies, the Commission should choose the profit calculation methodology that will 'appropriately restore the actual business situation' of the company;
- the Commission should adopt a profit determined as either:
  - the profit achieved by the whole company (noting that this is likely to be overstated in any case as it includes fabricated sinks which achieve a higher profit); or
  - the profit calculated in the ordinary course of trade using the company's cost to make and sell data as submitted (i.e. before any amendments made to the company's cost to make and sell calculations undertaken by the Commission, as discussed in this report).

As outlined above, where reasonably possible, in determining profit for constructed normal values the Commissioner 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 will only deviate from this approach where it is not possible to calculate profit

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<sup>25</sup> Dated 17 September 2014

<sup>26</sup> Jiabaolu, *Comments on Statements of Essential Facts (No. 238) and the proposal of price undertaking*, 12 January 2015.

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in line with this established approach, for reasons such as there not being domestic sales for use to determine profit.

The Commissioner considers that, in the case of Jiabaolu, the calculation of profit for normal value based on sales in the ordinary course of trade is reasonably possible, and so profit has been worked out as outlined above.

The Commissioner has performed these profit calculations using Jiabaolu's cost to make and sell after necessary amendments were made to the submitted data to account for:

- observed anomalies ('spikes') in Jiabaolu's costs calculations for certain models (refer to PART III of Appendix 6 and Jiabaolu's *Verification Visit Report*); and
- the uplift to incurred stainless steel raw materials costs after finding that the costs actually incurred were not reasonably reflective of competitive market costs.

As discussed in Jiabaolu's *Verification Visit Report* and throughout this report (particularly in Non-Confidential Appendix 6), these amendments were considered necessary by the commission to ensure that the costs adopted by were reasonably complete, relevant and accurate, and were reflective of competitive market costs. 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 Commissioner 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 Commissioner 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 therefore considers these amendments to cost to make and sell were necessary and reasonable to be made prior to calculating Jiabaolu's profit, as opposed to using the company's cost to make and sell data as submitted (which Jiabaolu suggests should be used) as this would not result in a reasonable calculation of profit.

In addition, although the second approach suggested by Jiabaolu (determining profit for normal values based on whole company profit) is contrary to the Commission's established practice (and hence is not the preferred approach, the Commissioner does not consider the suggested profit reasonable for determining a normal value profit in any case. The profit adopted by the Commission in calculating normal values for which should be reflective of a profit on domestic sales of deep drawn stainless steel sinks. As the Jiabaolu's whole company sales include export sales (to Australia and third countries) and sales of products that are not the goods, such as fabricated sinks, it is observed that this whole company profit would not reasonably reflect the profit for domestic deep drawn stainless steel sinks.

### **6.12 Dumping margins for selected exporters**

The Commission's methodology for calculating export prices and normal values, and determining dumping in relation selected exporters of the goods is outlined below.

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During the investigation, the Commission received several exporter-specific submissions relating to these calculations. The details of these are discussed in **Non-Confidential Appendix 6**.

### 6.12.1 Primy

#### Export price

The Commissioner 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;
- 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 s. 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 s. 269TAC(2)(c) of the Act using Primy's quarterly weighted average cost to make and sell data (revised for 304 SS CRC cost uplift), by model, and an amount for profit based determined as outlined in Section 6.11 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 s. 269TAC(9).

#### Dumping margin

The dumping margin for Primy was established in accordance with s. 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 5.0%

### 6.12.2 Jiabaolu

#### Export price

The Commissioner 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

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- the purchases of the goods by the importer were arm's length transactions.

Export prices have thus been established in accordance with s. 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 s. 269TAC(2)(c) of the Act using Jiabaolu's quarterly weighted average cost to make and sell data (revised for stainless steel cost uplift), by model, and an amount for profit based determined as outlined in Section 6.11 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 s. 269TAC(9).

### Dumping margin

The dumping margin for Jiabaolu was established in accordance with s. 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 15.4%.

### **6.12.3 Zhuhai Grand**

#### Export price

The Commissioner 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 s. 269TAB(1)(a) as the price paid by the importer less any charges incurred after exportation.

#### Normal value

Normal values were established for certain models of exported goods where there was an exact model match sold on the domestic market have been established under s. 269TAC(1) as

the price paid or payable for like goods sold on the domestic market in the ordinary course of trade in arm's length transactions.

A positive adjustment of 8% was made to these normal values 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 s. 269TAC(8).

In relation to all remaining export models, normal values were established in accordance with s. 269TAC(2)(c) of the Act using Zhuhai Grand's quarterly weighted average cost to make and sell data (revised for 304 SS CRC cost uplift), by model, and an amount for profit based determined as outlined in Section 6.11 above.

A positive adjustment of 8% was made to these normal values 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 s. 269TAC(9).

#### Dumping margin

The dumping margin for Zhuhai Grand was established in accordance with s. 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 12.5%.

### **6.13 Determination of dumping margins – residual exporters**

The 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 s. 269TACB(2)(a).

The dumping margin for residual exporters is 10.4%.

### **6.14 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*.

#### **6.14.1 Export price**

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

- export price data from the ACBPS import database;



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- 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 Chapter 5.

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 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 Commissioner 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 s. 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.

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

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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 Commissioner 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 s. 269TAC(6) of the Act.

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

### **6.14.3 Dumping margins**

The dumping margin for uncooperative and all other exporters from China was established in accordance with s. 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 49.5%.

## 7 SUBSIDY INVESTIGATION

### 7.1 Findings

The Commission found that countervailable subsidies have been received in respect of 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 Commissioner has terminated the countervailing investigation as it relates to exports by those two exporters, in accordance with s. 269TDA(2).

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

### 7.2 Categorisation of exporters – sampling

As outlined at Section 6.3, the Commission has undertaken a sampling exercise, selecting three ‘selected’ exporters and using information gathered in relation to these exporters to determine dumping in relation to all other exporters (whether they be ‘residual’ or ‘uncooperative’ exporters).

This sampling was performed in accordance with s. 269TACAA.

The sampling also applies to the Commission’s investigation into the alleged subsidisation of the goods exported from China. The same classification of exporters as that outlined in Section 6.3 thereby applies to the subsidy investigation.

### 7.3 Investigated programs

#### 7.3.1 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;<sup>27</sup>
- the March 2012 final determination of the CBSA in relation to its investigation into certain pup joints exported from China;<sup>28</sup>
- a Specialty Steel Industry of North America report released April 2007 into “Chinese Government Subsidies to Stainless Steel Industry”;

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<sup>27</sup> 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).

<sup>28</sup> *Ibid.*

- 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 and Metal Bulletin Research;
- analysis of New and Full Notification Pursuant to Article XVI:1 of the General Agreement on Tariffs and Trade (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 eight 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 exporters<sup>29</sup> 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.

### **7.3.2 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.

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<sup>29</sup> Exporters that provided responses to the CBSA's information requests and cooperated with its investigations.

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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.

The GOC provided a response to the SGQ on 19 September 2014. In its response, 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.

The Commissioner does not consider that the Commission's 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. s. 269TC(10) of the Act allow for the Commissioner to investigate alleged subsidy programs in the manner undertaken by the Commission.

Detailed discussion of the GOC's submissions on this matter, and the Commission's assessment of this issue, are contained in **Non-Confidential Appendix 7**.

### 7.4 Summary of countervailable programs

After assessing all relevant information available, the Commissioner 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.

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

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<b>Program Number</b>	<b>Program Name</b>	<b>Program Type</b>	<b>Countervailable In relation to the goods (Yes/No)</b>
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 9 – subsidy programs investigated following Tasman’s application**

## **7.5 Subsidy margins**

### **7.5.1 Selected exporters**

The Commissioner found that the selected exporters received financial contributions in respect of the goods that conferred a benefit under 23 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 Commissioner 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 Commissioner has had

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regard to the available relevant facts and determines that uncooperative exporters have received financial contributions that have conferred a benefit under 23 programs found to be countervailable in relation to deep drawn stainless steel sinks.

### 7.5.4 Subsidy 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	Product subsidy margin
Zhuhai Grand Kitchenware Co., Ltd	3.3%
Primy Corporation Limited	Negligible
Zhongshan Jiabaolu Kitchen & Bathroom Products Co., Ltd	Negligible
Jiangmen New Star Hi-Tech Enterprise Ltd.	3.4%
Elkay (China) Kitchen Solutions Co., Ltd.	3.4%
Franke (China) Kitchen System Co., Ltd	3.4%
Xinhe Stainless Steel Products Co., Ltd	3.4%
Guangzhou Komodo Kitchen Technology Co., Ltd.	3.4%
Rhine Sinkwares Manufacturing Ltd. Huizhou	3.4%
Yuyao Afa Kitchenware Co., Ltd	3.4%
Jiangmen City HeTangHengWeiDa Kitchen & Sanitary Factory	3.4%
Uncooperative and all other exporters	6.4%

**Table 10 - subsidy margins for all exporters**

The Commission's findings in relation to each program investigated (including the method of calculation of subsidy margins) are outlined in **Non-Confidential Appendix 8**.

The calculation of subsidy margins for each selected, residual and uncooperative exporter is at **Confidential Appendix 9**.

*Note: the product subsidy margins shown in Table 10 in relation to all exporters have changed from those published in SEF 238, due to the correction of a calculation error identified in the benchmark price for 304 SS CRC used to determine benefit under Program 1. See Non-Confidential Appendix 8 for further discussion of the benchmark and this correction.*

### 7.5.5 Termination of investigation – negligible exporters

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

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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 Commissioner has found that the goods exported by Jiabaolu and Primy during the investigation period have not been in receipt of an above-negligible level of countervailable subsidisation. The Commissioner has terminated the subsidy investigation in so far as it relates to Primy and Jiabaolu, in line with the requirements of s. 269TDA(2).



## **8 ECONOMIC CONDITION OF THE INDUSTRY**

### **8.1 Findings**

Based on an analysis of the information contained in the application and obtained and verified during the Commission's verification visit with Tasman, the Commissioner is of the view 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 causes of this injury are discussed in Chapter 9 of this report.

### **8.2 Commencement of injury, and analysis period**

Tasman submitted 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% from the previous year and the market share of dumped and subsidised exports grew by 12% over that period. In this same period, Tasman submitted that the market share held by the Australian industry declined by 20%.

The Commissioner 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 CON 238, the Commissioner 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 Commissioner 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.

## 8.3 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 cost to make and sell 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 cost to make and sell 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 report, the Commissioner 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 Volume effects

### 8.4.1 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.

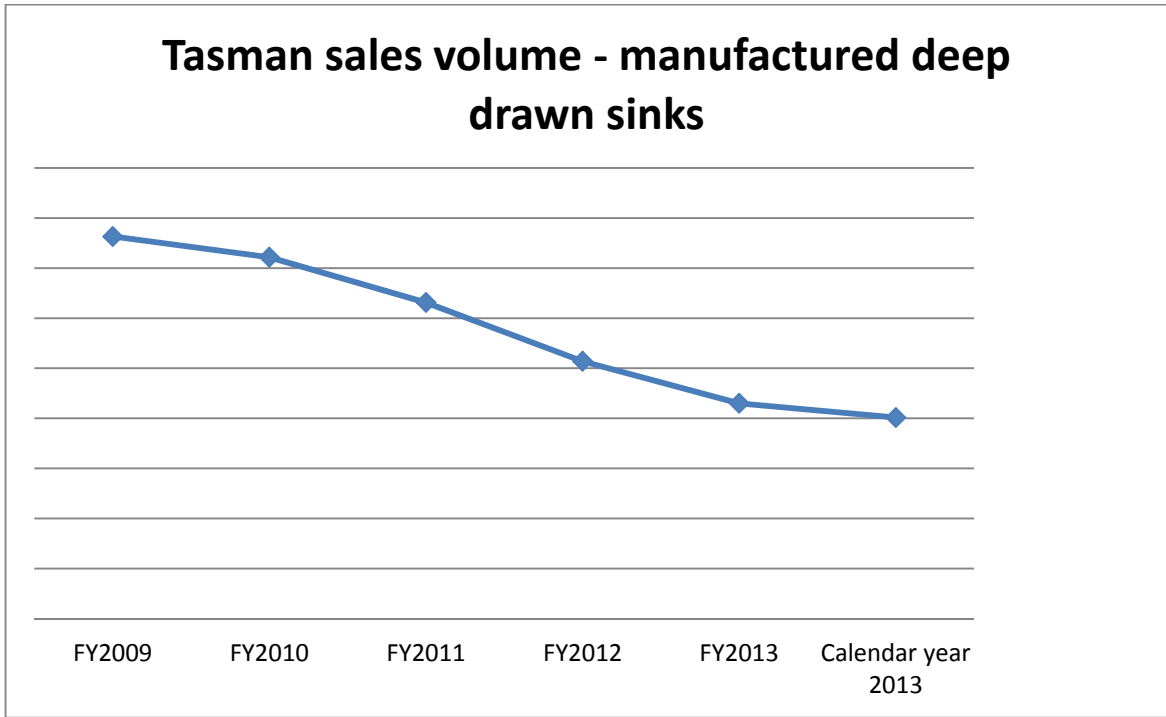


Figure 1 – Tasman’s manufactured deep drawn stainless steel sinks domestic sales volume

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

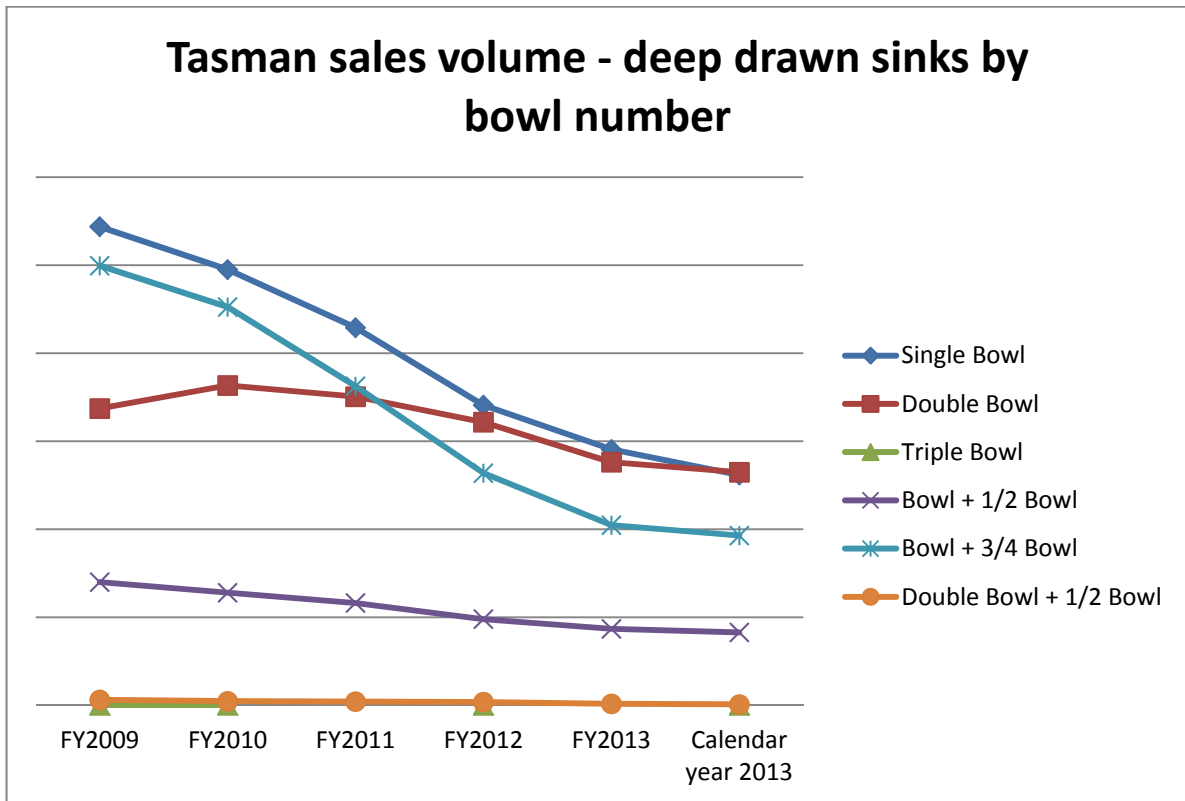


Figure 2 – Tasman’s manufactured deep drawn stainless steel sinks domestic sales volume (bowl number)

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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 10 below depicts an index of changes in Tasman's sales volume by product (bowl number) on the Australian market from FY2009 – calendar year 2013.

	<b>FY2009</b>	<b>FY2010</b>	<b>FY2011</b>	<b>FY2012</b>	<b>FY2013</b>	<b>Calendar year 2013</b>
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 11 – Index of changes in applicant's manufactured deep drawn stainless steel sinks domestic sales volume (by bowl number)**

### 8.4.2 Market share

As discussed in Chapter 5, the Commissioner considers that the Commissioner is unable to accurately assess market size of the Australian deep drawn stainless steel sinks industry for the purposes of this investigation. The Commissioner is therefore unable to make accurate observations as to market share over the injury analysis period in this report.

### 8.4.3 Conclusion – volume effects

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

## 8.5 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.

### **8.5.1 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.

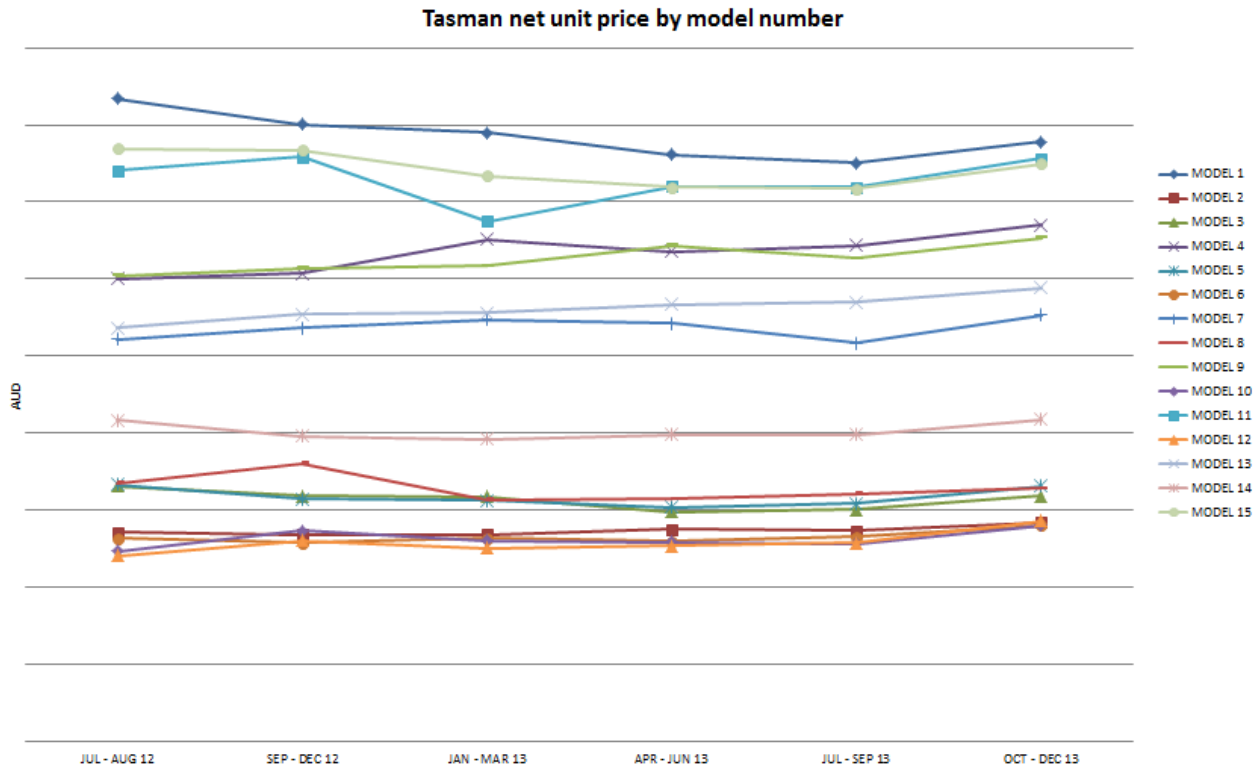
As discussed in Section 5.3 of the *Australian Industry Visit Report*, the verification team considered that the price of Tasman's product offering of deep drawn stainless steel sinks is impacted by more than bowl number, with price differentiations due to product tier, range and number of drainer boards 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 Commissioner 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 Commissioner 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 Commissioner 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.



**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 Commissioner 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.

**8.5.2 Conclusion – price effects**

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

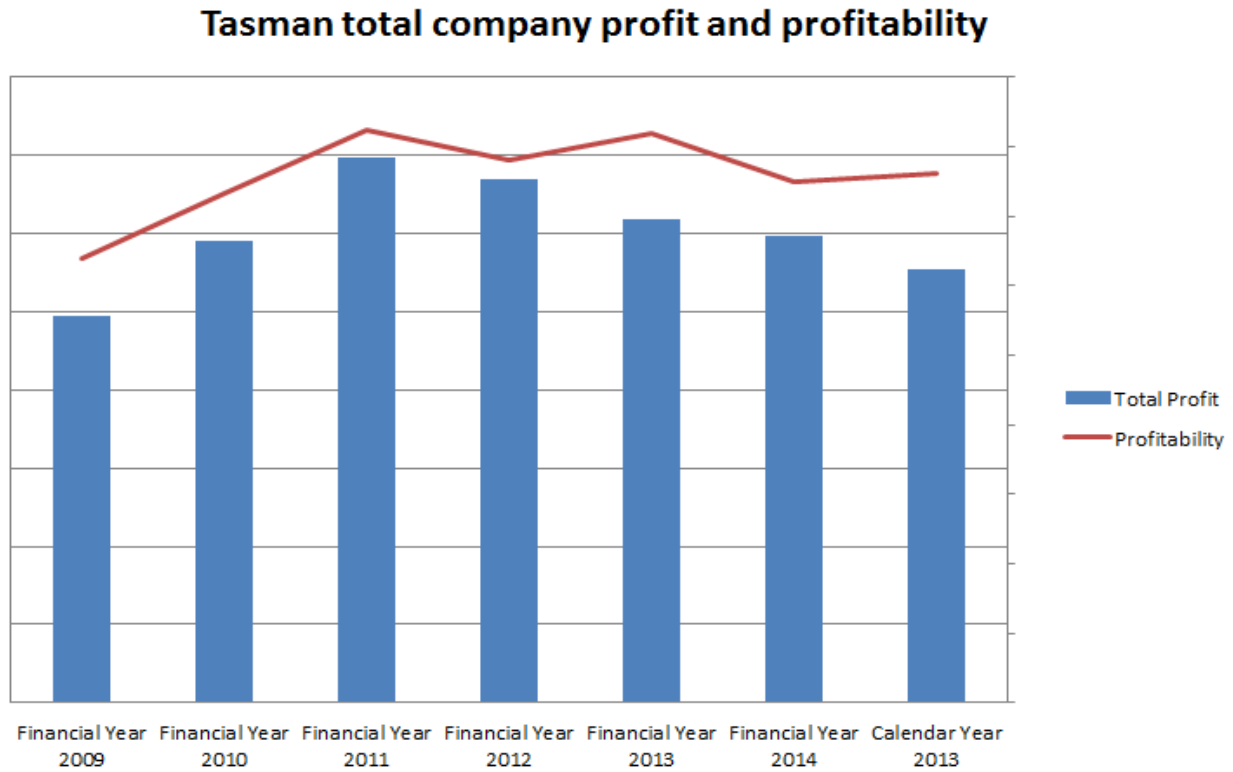
**8.6 Profits and profitability**

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

As noted in Section 8.3, the Commissioner considers that Tasman’s cost to make and sell 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

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

**8.6.1 Conclusion – profit and profitability**

Based on analysis of Tasman’s operations as a whole, there are 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.

## **8.7 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 Commissioner 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, are 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 SUBSIDIES CAUSED MATERIAL INJURY?**

### **9.1 Findings**

The Commissioner finds that the deep drawn stainless steel sinks exported to Australia from China at dumped and subsidised prices cause material injury to the Australian industry producing like goods.

### **9.2 Introduction**

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 Commissioner 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.

The Commissioner has established that during the investigation period exports of deep drawn stainless steel sinks were dumped and subsidised and that the Australian industry has suffered injury.

This dumping and subsidisation enabled importers of deep drawn stainless steel sinks to have a competitive advantage on price compared to the Australian industry.

### **9.3 Dumping**

The Commissioner found that deep drawn stainless steel sinks exported to Australian from China were dumped, with dumping margins from 5.0% to 49.5%.

### **9.4 Subsidy**

The Commissioner found that all deep drawn stainless steel sinks exported to Australia from China were subsidised during the investigation period, except those exported by Primy and Jiabaolu. The subsidy margins ranged from 3.3% to 6.4% (Primy and Jiabaolu's margins were negligible).

### **9.5 Price effects**

#### **9.5.1 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.

The Commissioner 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).

#### **9.5.2 Price undercutting**

For the purposes of this report, the Commissioner 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 11** of this report.

The Commission compared quarterly weighted average net delivered into store prices (Australian dollars (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).

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%.

The Commissioner 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.

### **9.5.3 Conclusion**

As outlined in Chapter 8, the Commissioner 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 Commissioner is satisfied, 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 Commissioner is satisfied that the dumping margins ranging from 5.0% to 49.5% and subsidy margins ranging from 3.3% to 6.4% 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 Commissioner determines that a proportion of the price undercutting experienced by Tasman is directly attributed to dumping and subsidisation.

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

## **9.6 Volume effects**

### **9.6.1 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 CON 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.

### **9.6.2 Data limitations**

The Commission 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 Commissioner 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 Commissioner has examined other market size indicators for the purpose of this report (see below).

### **9.6.3 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(v) of Non-confidential Appendix 1 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

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

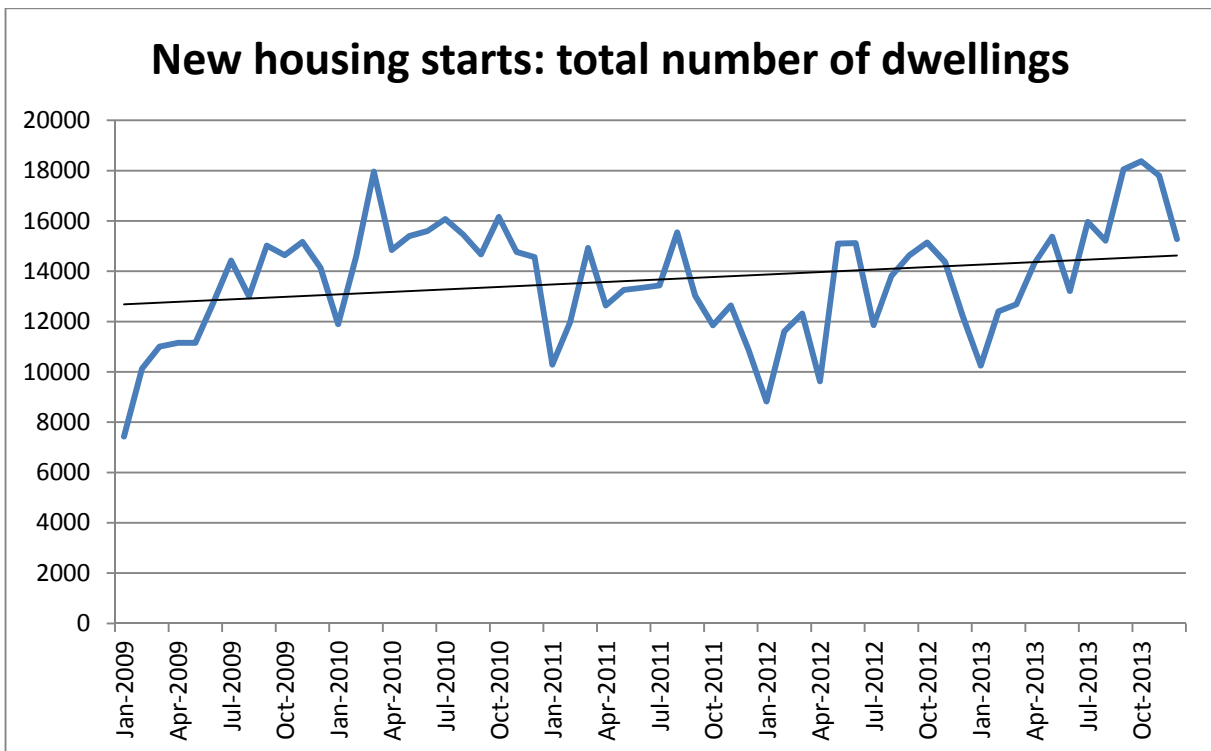
Market size trends

- 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.

**9.6.4 Housing statistics**

In addition to the above general market information gathered from interested parties, the Commission has accessed publicly available ABS data<sup>30</sup> 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 12**.

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**

<sup>30</sup> 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.

#### **9.6.5 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 Commissioner 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 8.4).

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 Commissioner 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 Commissioner 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 9.5.2, the Commissioner 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 9.5.3, 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 Commissioner therefore concludes that dumping and subsidisation has caused volume injury, in terms of loss of sales volumes, to the Australian industry.

### **9.7 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.

## PUBLIC RECORD

The Commissioner 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.

### 9.7.1 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 12 – percentage of total import volume by country**

This analysis forms **Confidential Appendix 13**.

Noting that even though the data used includes significant volumes of fabricated sinks, the Commissioner 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 Commissioner 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 amount 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 Commissioner 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.

**9.7.2 Contractions in demand or changes in patterns of consumption – s. 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 Commissioner 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 9.6.5, the Commissioner 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.

**9.7.3 Developments in technology - s. 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 Commissioner 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(v) of Non-Confidential Appendix 1, 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.



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

#### **9.7.4 Other matters**

##### Australian dollar

In its submission of 22 May 2014, Shriro Australia Pty Ltd (Shriro) highlights that it considers that shifts in exchange rates (presumably Chinese RMB to 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 Commissioner 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 Commissioner 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 Commissioner has 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(v) of Non-Confidential Appendix 1).

Further, the Commission has evidence that shows:

- 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 s. 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 amount of dumping.

The Commissioner 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 Commissioner 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 Commissioner 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 9.6, Tasman has experienced a decline in sales (and hence production) volumes throughout the injury analysis period, and the company has thus not been operating at its full production capacity<sup>31</sup> 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

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<sup>31</sup> In SEF 238, the Commission erroneously stated that Tasman "has thus been operating at its full production capacity". The commission was notified of this error by Tasman in its submission dated 12 January 2015.

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.

## **9.8 Summary – causal link**

The Commissioner has established a connection between imports of deep drawn stainless steel sinks from China at dumped and subsidised prices and the fact that prices of deep drawn stainless steel sinks at dumped and subsidised prices sold in Australia undercut the Australian industry prices across all categories of deep drawn stainless steel sinks throughout the investigation period.

The price undercutting and associated price pressures have contributed to price depression and suppression for the Australian industry, which has resulted in lower profitability.

The Commissioner considers that other possible causes of injury do not detract from the assessment that dumping and subsidisation have caused material injury to the Australian industry.

The Commissioner finds that dumped or subsidised imports of deep drawn stainless steel sinks imported to Australia from China have caused material injury to the Australian industry producing like goods.

## 10 WILL DUMPING AND SUBSIDY AND MATERIAL INJURY CONTINUE?

### 10.1 Findings

The Commissioner makes a finding that exports of deep drawn stainless steel sinks from China in the future may be at dumped and subsidised prices<sup>32</sup> and that continued dumping and subsidisation may cause further material injury to the Australian industry.

### 10.2 The Commissioner's Assessment

#### 10.2.1 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 5.0% to 49.5%.

The Commissioner 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 Commissioner considers that dumping will continue if anti-dumping measures are not imposed.

#### 10.2.2 Will subsidisation continue?

The Commissioner found that deep drawn stainless steel sinks exported to Australia from China during the investigation period were subsidised, with subsidy margins ranging from 3.3% to 6.4%.

The Commissioner 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 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.

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<sup>32</sup> Excluding deep drawn stainless steel sinks exported by Jiabaolu and Primy, which the Commissioner finds have not been in receipt of countervailable subsidisation.

**10.2.3 Will material injury continue?**

The Commissioner 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 Commissioner 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 Commissioner considers that this impact may be particularly evident in price undercutting and reduced profits and profitability.

Based on the available evidence, the Commissioner 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 Findings

As the Commissioner has found that:

- the goods have been in receipt of countervailable subsidies; and
- the GOC has not complied with its requirements under Article 25 of the *SCM Agreement* for the compliance period;

the Commissioner recommends that regard should not be had to the desirability of fixing a lesser rate of duty due to the operation of s.8(5BAA)(a) of the Dumping Duty Act.

The Commissioner recommends that the full dumping and subsidy margins determined in this report be applied to any interim dumping duty and interim countervailing duty taken in relation to deep drawn stainless steel sinks exported to Australia from China.

### 11.2 Applicable legislation

When issuing a dumping duty notice and a countervailing duty notice, Section 5BA of the Dumping Duty Act requires that the Parliamentary Secretary is obliged to have regard to the desirability of ensuring that the amount of dumping and countervailing duty is not greater than is necessary to prevent injury, or a recurrence of the injury.

However, the Parliamentary Secretary is not required to have mandatory consideration of the desirability of fixing a lesser rate of duty where the Parliamentary Secretary is satisfied that certain circumstances exist.

In cases where the Parliamentary Secretary issues a dumping duty notice and a countervailing duty notice, these circumstances are where:

- the normal value of the goods was not ascertained under s. 269TAC(1) because of the operation of s. 269TAC(2)(a)(ii);
- the Australian industry in respect of like goods consists of at least two small-medium enterprises; or
- 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.

### 11.3 Commission's assessment

As detailed in Chapter 13 of this report, the Commissioner recommends that the Parliamentary Secretary issue a dumping duty notice and a countervailing duty notice in respect of deep drawn stainless steel sinks exported to Australia from China.

Further, as outlined in Chapter 7 and Non-confidential Appendix 8, the Commissioner has found that the goods have been in receipt of notified countervailable subsidies.

## **PUBLIC RECORD**

In addition, the Australian Government's Department of Foreign Affairs and Trade has advised the Commission that China has failed to comply with its notification obligations under Article 25 of the *SCM Agreement*.

In light of the above, the Commissioner considers that regard should not be had to the desirability of fixing a lesser rate of duty, and the full margin of the assessed dumping and countervailable subsidisation should be applied to the collection of interim dumping duty and interim countervailing duty that the Commissioner recommends to the Parliamentary Secretary in the final report for this investigation (see Chapter 13).

## 12 ANTI-DUMPING MEASURES

### 12.1 Findings

The Commissioner recommends 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; and
- 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 recommends 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 Recommended measures

#### 12.2.1 Forms 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).

In SEF 238, the Commission preliminarily determined that that interim dumping duty be calculated ad valorem (i.e. a proportion of export price).

#### 12.2.2 Submission in response to SEF 238

In its submission in response to SEF 238, Tasman opposed the use of *ad valorem* method, and suggested the Commission should instead use the 'combination' method which involves a fixed and variable component of measures (with a fixed 'floor price' and an additional ad valorem rate). Tasman submitted that the 'combination' method would help reduce the potential for circumvention activities following the imposition of measures.



The Commissioner notes that in a separate submission in opposition to a price undertaking offered by Jiabaolu (see below), Tasman submitted that the cyclical nature of steel prices is a limitation to imposing price undertakings that involve a fixed floor price. The Commissioner notes this weakens Tasman's assertion above that a combination type of anti-dumping measures that includes a floor price is preferable (see further discussion below regarding the cyclical nature of steel pricing and the potential impact of this on anti-dumping measures).

### **12.2.3 Recommendation**

The Commissioner considers that a 'combination' method is unsuitable for the purposes of imposing measures against exporters of deep drawn stainless steel sinks from China, as the Commission would be unable to reasonably establish the fixed (floor price) component of a combination duty approach. This is due to the fact that:

- the Commission found during its investigation that there are numerous models of deep drawn sinks, and there is substantial variation in price across models and/or product tiers;
- any such floor price would reasonably need to be split into different floor prices by models, as a single aggregate floor price would not apply to the majority of models; but
- the Parliamentary Secretary is not able to fix anti-dumping measures by model type, but only on aggregate.<sup>33</sup>

A single minimum floor price would therefore likely be too high for some sink models, and too low for others.

The Commissioner recommends that the Parliamentary Secretary fix the rate of interim dumping duty as the ad valorem dumping rate determined in this investigation, calculated as a percentage of export price.

This is considered the most reasonable form of measures in the circumstances, taking in to account the fact that the Parliamentary Secretary is not able to fix anti-dumping measures that differentiate between different models of the goods (i.e. a certain rate for model 1, and a different rate for model 2), and an aggregate rate of measures is not reasonable due to the number of various models of the goods exported to Australian and the significant prices between them;

The Commissioner notes that, even if measures that differentiated between models were permissible, the export price of the goods is likely to fluctuate significantly throughout the life of the measures, as the price of the main raw material for deep drawn stainless steel sinks, 304 SS CRC, has the potential to significantly fluctuate in line with global steel pricing trends. This would make any method of anti-dumping measures that has a fixed component undesirable, as these fluctuations may foreseeably dilute the effectiveness of the measure, or result in the significant over-collection of interim duties.

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<sup>33</sup> This position follows the 4 September 2013 findings by the Federal Court of Australia (Federal Court) in relation to the investigation into aluminium extrusions from China, where the Federal Court found that the Attorney-General (the decision maker in that case) did not have the authority to set measures in relation to aluminium extrusions by model (in that case, by finish type). Notification of the Federal Court's decision was made in Anti-Dumping Notice 2013/80.

#### **12.2.4 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:

- the normal value of all deep drawn stainless steel sinks exported to Australia from China be constructed under s. 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 reasonably reflect 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 Requests for price undertakings**

The Komodo Group<sup>34</sup> and Jiabaolu<sup>35</sup> have each separately requested that, should the Commissioner recommend to the Parliamentary Secretary that anti-dumping measures be imposed following the investigation, the Commissioner further recommend that a price undertaking be negotiated with the Komodo Group and Jiabaolu. These price undertakings would take the form of minimum export prices that the parties agree not to export below.

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<sup>34</sup> Komodo Group, *Komodo Submission on Products Exemption and Weighted Average Dumping Margin*, 8 September 2014.

<sup>35</sup> Jiabaolu, *Comments on Statements of Essential Facts (No.238) and the proposal of price undertaking*, 12 January 2015.

## PUBLIC RECORD

In a submission dated 19 January 2015, Tasman objected to the granting of a price undertaking in relation to the exports of Jiabaolu.<sup>36</sup>

The Commissioner recommends that the Parliamentary Secretary does not accept any price undertaking offers primarily due to the above-mentioned fact that the Parliamentary Secretary is unable to impose anti-dumping measures that differentiate the rate of interim dumping and interim countervailing duties across models. As a result, the Commissioner considers that a price undertaking would need to be based on one minimum export price that covers all models manufactured by an exporter, which would not account for the wide variation in the price of different sink models.

The Commission found in its investigations that all selected cooperating exporters sold a large range of sink models which obtained varying prices across a broad price range. Setting one minimum price to cover all models sold by an exporter would likely result in that minimum price being too high for some sink models, and too low for others. Therefore, the Commissioner is not satisfied that the terms of an undertaking would adequately remove the injury, or the threat of injury, to which the application is addressed so far as the exporters offering the undertakings are concerned.

Even if the Parliamentary Secretary were able to accept a price undertaking that allowed for differentiation of a minimum export price between models, the Commissioner notes that there are significant other impediments to the acceptance of such undertakings.

In the case of the Komodo Group, which includes a related Australian importer, the Commissioner considers that where the exporting and importing parties are related the risk of circumventing the terms of any undertaking are increased (it is noted that Tasman considers that the exclusive supply agreement between Jiabaolu and its Australian customer (via a trading entity) also provides a higher risk of circumvention where a price undertaking exists).

More importantly, because prices of stainless steel, the primary raw material for manufacturing deep drawn stainless steel sinks, are cyclical, the Commission considers 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 (thus contemporaneous and future measures of dumping margins specific to the Komodo Group and Jiabaolu cannot be reasonably measured or estimated).

The Commissioner notes that Jiabaolu has looked to address the concern raised by fluctuating steel prices by offering a price undertaking that envisages the frequent internal review of the minimum export price, and adjustment of this in line with fluctuations in stainless steel prices. The Commissioner considers this would place an unreasonable administrative and compliance burden on the undertaking. In any case, as outlined above, the need for an aggregate anti-dumping measure means that the price undertaking is not considered reasonable in any case.

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<sup>36</sup> Tasman, *Response of the Australian industry to the exporters' submission No. 096 to the Statement of Essential Facts No. 238*, 19 January 2015.

## 12.4 Imposition of duties retrospectively

### 12.4.1 Introduction

As a general rule, s. 269TN(1) provides that the Parliamentary Secretary is not permitted to impose anti-dumping measures in respect of goods that have already been entered for home consumption (i.e. already imported), unless a security has been taken in relation to those goods under S. 42 (s. 269TN(2)).

However, s. 269TN(3)<sup>37</sup> and TN(5)<sup>38</sup> allow for exceptions to the above, providing that anti-dumping measures can be collected in respect of imported goods that are not subject to a security where certain conditions exist.

### 12.4.2 Applicable legislation – retrospective dumping duties

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 regard must be had 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
- 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)).

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<sup>37</sup> Dumping duties.

<sup>38</sup> Countervailing duties

### **12.4.3 Applicable legislation – retrospective countervailing duties**

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 dumping duties, the regard must be had 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)).

### **12.4.4 Commission policy**

### **12.4.5 SEF 238 findings**

In SEF 238, the Commission preliminary found that it should not recommend the Parliamentary Secretary impose retrospective dumping or countervailing duties on the importation of deep drawn stainless steel sinks from China.

The primary reason for this was that the Commission did not preliminarily consider that there was sufficient evidence to show that there had been an importation of large quantities of deep drawn stainless steel sinks during a short period of time (and therefore it was not necessary to consider the other elements necessary to determine whether retrospective duties should be imposed).

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

- The reliability of ACBPS importation data

The Commission preliminarily 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 the 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.

#### **12.4.6 Submission in response to SEF 238**

In its submission in response to SEF 238,<sup>39</sup> Tasman disagreed with the preliminary assessment of the Commission outlined in SEF 238 to not recommend the imposition of retrospective dumping and/or countervailing duties.

Tasman submitted that available import statistics (ABS) showed a 'steep incline' in the volume of imports following the initiation of the investigation. Tasman further queried whether forward order data was obtained by the Commission from interested parties, and whether this displayed a similar increase in import volumes.

In addition, Tasman submitted copies of 'price offers' obtained by Tasman from Chinese exporters that encourage the placement of higher volumes of orders before anti-dumping measures are imposed.

#### **12.4.7 Commission's assessment**

The Commission's draft chapter for the *Dumping and Subsidy Manual*, though not yet finalised, is available for consideration by interested parties on the Commission's webpage at <http://www.adcommission.gov.au/reference-material/manual/default.asp>. This draft text envisages that when determining whether a retrospective duty notice is warranted, the Commission will consider a 'large quantity' of goods for the purposes of s. 269TN(3) and (5) to be:

*...a quantity that is significantly more than that shown in previous patterns of importations.*

The Commission has adopted this interpretation when assessing the available information relating to the importations of deep drawn stainless steel sinks after initiation of the investigation.

The Commission observes the ABS data provided by Tasman, but again considers that this ABS data (which itself is generated from ACBPS import data that the Commission has obtained in its raw form) contains a significant volume of irrelevant imports (fabricated sinks and laundry units), and which places limitations on any conclusions that can be drawn from examining that data. The Commission therefore continues to consider that this data is not in itself a reliable source of information to determine that there has been the importation of a quantity that is significantly more than that shown in previous patterns of importations.

In light of this, the Commission has sought to analyse other available information to determine whether this element is satisfied.

As suggested by Tasman, the Commission has examined available forward order data obtained from exporters and importers to the investigation. While the volume of this data was limited (noting that a significant number of respondents to the exporter questionnaire stating

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<sup>39</sup> Dated 12 January 2015.

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that they did not have any forward orders in place for the goods at the time of submitting their response to the *Exporter Questionnaire*), analysis of available data does not show that there have been any importations of large quantities of deep drawn stainless steel sinks during a short period of time. In fact, the forward order data available a drop in import volumes of the goods during the period between initiation and imposition of securities (following a PAD on 13 August 2014). Details of this assessment form **Confidential Appendix 15**.

In addition, the Commission has considered whether the email evidence provided by Tasman satisfies the requirement that there have been any importations of large quantities of deep drawn stainless steel sinks during a short period of time. The Commission notes that this email evidence takes the form of discussion between Tasman and its Chinese suppliers of deep drawn stainless steel sinks (at the time of initiating the investigation, Tasman was itself an importer of the goods) suggesting that Tasman seek to minimise the impact of any potential anti-dumping measures by placing immediate larger orders to stockpile the goods. While the Commission notes that this is suggestive that such a practice may have occurred, it is not definitive evidence that importers have agreed to place large orders with their exporters.

In light of the above, the Commissioner considers that sufficient evidence does not exist to demonstrate that there has been one or more importations of the goods at a quantity that is significantly more than that shown in previous patterns of importations, and hence retrospective duties are not warranted.

It is observed that, in addition to the above finding that there is insufficient evidence that import volumes indicate a retrospective dumping and countervailing duties are warranted, the Commission is not satisfied that there is sufficient evidence to find that several other elements necessary for implementing retrospective duties are satisfied, including the requirements that:

- 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));
- 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 (dumping duties); or
- publication of a retrospective notice is necessary to prevent the recurrence of the injury (s. 269TN(5)(b)) (countervailing duties).

In light of the above, the Commissioner does not recommend that the parliamentary secretary impose retrospective dumping or countervailing duties.

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The Commissioner is satisfied that the dumping and subsidisation of deep drawn stainless steel sinks exported to Australia from China has caused material injury to the Australian industry producing like goods.

**The Commissioner recommends that the Parliamentary Secretary impose:**

- anti-dumping measures on deep drawn stainless steel sinks exported to Australia from China; and
- countervailing measures on deep drawn stainless steel sinks exported to Australia from China (from all exporters other than Primy and Jiabaolu).

**The Commissioner recommends that the Parliamentary Secretary grant:**

- an exemption from anti-dumping measures in relation to deep drawn stainless steel cleaner's sinks; and
- an exemption from anti-dumping measures in relation to deep drawn stainless steel hand wash basins.

**The Commissioner recommends the Parliamentary Secretary be satisfied:**

- in accordance with s. 269TAB(3), that sufficient information has not been furnished, or is not available, to enable the export price of deep drawn stainless steel sinks exported to Australia from China by the category of 'uncooperative and all other exporters' be determined under s. 269TAB(1)(a), (b), or (c);
- in accordance with s. 269TAC(2)(a)(i), 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 purposes of determining normal value under Section TAC(1), the normal value of goods exported to Australia from China cannot be determined under s. 269TAC(1) in relation to all exports from Primy and Jiabaolu, and certain exports by Zhuhai Grand;
- in accordance with s. 269TAC(6), sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under s. 269TAC(1), (2), (5C) or (5D) for the category 'uncooperative and all other' exporters;
- in accordance with s. 269TG(1) the amount of the export price of deep drawn stainless steel sinks that have been exported to Australia from China is less than the amount of the normal value of those goods and because of that, material injury to the Australian industry producing like goods has been, or is being caused;
- in accordance with s. 269TG(2) the amount of the export price of deep drawn stainless steel sinks already exported to Australia from China is less than the amount of the normal value of those goods and the export price of the goods that may be exported to Australia from China in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has



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been, or is being caused;

- in accordance with s. 269TJ(2), countervailable subsidies have been received in respect of deep drawn stainless steel sinks already exported to Australia from China, and may be received in respect of like goods that may be exported to Australia from China in the future and because of that, material injury to the Australian industry producing like goods has been, or is being caused;
- in accordance with s. 269TJA(1), that as to deep drawn stainless steel sinks that have been exported to Australia from China:
  - the amount of the export price of the goods is less than the amount of the normal value of the goods; and
  - a countervailable subsidy has been received in respect of the goods; and
  - because of the combined effect of the two, material injury to the Australian industry producing like goods has been and is being caused
- in accordance with s. 269TJA(2), that as to deep drawn stainless steel sinks that have already been exported to Australia from China:
  - the amount of the export price of the goods is less than the amount of the normal value of the goods and the amount of the export price if the goods exported to Australia in the future may be less than the normal value of the goods; and
  - a countervailable subsidy has been received in respect of the goods and may be received in respect of like goods that may be exported to Australia in the future; and
  - because of the combined effect of the two, material injury to the Australian industry producing like goods has been and is being caused
- in accordance with s. 8(7)(a) and 10(8)(a) of the Dumping Duty Act, like or directly competitive goods to the following 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:
  - deep drawn stainless steel cleaner's sinks; and
  - deep drawn stainless steel hand wash basins.

### **The Commissioner recommends the Parliamentary Secretary determine:**

- in accordance with s. 269TAAD(4), the amounts for the cost of production or manufacture of goods in the country of export and the administrative, selling and general costs associated with the sale of those goods;
- in accordance with s. 269TAB(3), the export prices for the categories of 'uncooperative and all other' exporters be determined having regard to all relevant information;
- in accordance with s. 269TAC(2)(c), the cost of production or manufacture of the goods in the country of export, and the administrative, selling and general costs associated with the sale and the profit on that sale;
- in accordance with s. 269TAC(6), normal values for the categories of 'uncooperative

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and all other' exporters having regard to all relevant information;

- in accordance with s. 269TACB(1), by comparison of the weighted average of export prices during the investigation period and the weighted average of normal values during that period, that exports of deep drawn stainless steel sinks from China were dumped; and
- in accordance with s. 269TACC(3), that financial contribution, received in respect of the goods, of a kind that is other than that referred to in s. 269TACC(2), has conferred a benefit.

### **The Commissioner recommends the Parliamentary Secretary direct:**

- in accordance with s. 269TAC(8), the price paid or payable for like goods sold by Zhuhai Grand be taken to be such a price adjusted for differences between domestic and export sales to ensure a fair comparison.
- in accordance with s. 269TAC(9), the price paid or payable for like goods sold by:
  - Primy;
  - Jiabaolu; and
  - Zhuhai Grand

be taken to be such a price adjusted for differences between domestic and export sales to ensure a fair comparison.

### **The Commissioner recommends the Parliamentary Secretary compare:**

- in accordance with s. 269TACB(2)(a), 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 Commissioner recommends the Parliamentary Secretary declare:**

- in accordance with s. 269TG(1), by public notice, that section 8 of the Dumping Duty Act applies to:
  - the goods exported by all exporters from China to the extent permitted by s. 269TN; and
  - like goods that were exported to Australia by all exporters from China after the Commissioner made a PAD under s. 269TD on 13 August 2014 but before publication of the notice, to the extent permitted by s. 269TN;
- in accordance with s. 269TG(2), by public notice, that s. 8 of the Dumping Duty Act applies to like goods that are exported to Australia by all exporters from China, after the date of publication of the notice;
- in accordance with s. 269TJ(2), by public notice, that s. 10 of the Dumping Duty Act applies to like goods that are exported to Australia by all exporters from China, except Primy and Jiabaolu, after the date of publication of the notice.

**14 ATTACHMENT AND APPENDICES**

<b>Attachment</b>	
<b>Attachment 1</b>	Parliamentary Secretary notices and schedules
<b>Appendices</b>	
<b>Non-Confidential Appendix 1</b>	Assessment of claims – of goods not subject to the investigation or eligible for Ministerial exemption
<b>Confidential Appendix 2</b>	Calculations of export prices, normal values and dumping margins
<b>Non-Confidential Appendix 3</b>	Assessment of market situation
<b>Non-Confidential Appendix 4</b>	Assessment of reasonableness of stainless steel costs in China and determination of a competitive market substitute price
<b>Confidential Appendix 5</b>	MEPS European and North American average price calculations
<b>Non-Confidential Appendix 6</b>	Consideration of exporter-specific submissions of dumping calculations
<b>Non-Confidential Appendix 7</b>	Assessment of legality of investigating ‘new’ subsidy programs
<b>Non-Confidential Appendix 8</b>	Assessment of the countervailability of subsidy programs
<b>Confidential Appendix 9</b>	Calculations of countervailable subsidisation
<b>Confidential Appendix 10</b>	Economic condition of the industry analysis
<b>Confidential Appendix 11</b>	Price undercutting analysis
<b>Non-Confidential Appendix 12</b>	Housing starts statistical analysis
<b>Confidential Appendix 13</b>	Import volume analysis
<b>Non-confidential Appendix 14</b>	Outline of previous relevant market situation and costs reasonableness findings

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**Confidential Appendix 15**

Forward order analysis

## NON-CONFIDENTIAL APPENDIX 1 – ASSESSMENT OF CLAIMS OF GOODS NOT SUBJECT TO THE INVESTIGATION OR ELIGIBLE FOR MINISTERIAL 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 two formal requests for a ministerial exemption lodged by Abey in relation to tight corner radius sinks and Stoddart Manufacturing in relation to cleaner’s sinks and hand wash basins.

During the investigation, the Commission published *Issues Paper 2014/03*,<sup>40</sup> which discussed issues relating to the goods and like goods relevant to assessing the claims made by interested parties in relation to these matters up to that date. 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 *Issues Paper 2014/03*, the Commission received several more submissions addressing these goods and like goods issues, which have been incorporated into the considerations in this report.

In addition, following the publication of SEF 238, Tasman made an additional submission in relation to the Commission’s assessment of free-standing laundry units, discussed below.

### 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 s. 269TG or a countervailing duty notice under s. 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.

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<sup>40</sup> On 20 November 2014

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. s. 8(7) and 10(8) provide the grounds under which an exemption can be granted from dumping and countervailing duties respectively.

The most relevant grounds to deep drawn stainless steel sinks are:

- where a TCO exists in relation to a particular sub-set of the goods (s. 8(7)(b) and 10(8)(aa); and
- where 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 (s. 8(7)(a) and 10(8)(a)).

### **ELEMENTS OF S. 8(7)(b) AND 10(8)(AA) EXEMPTIONS**

In order for goods to be eligible for an exemption under s. 8(7)(b) or 10(8)(aa) of the Dumping Duty Act, the Parliamentary Secretary must be satisfied that a TCO made under Part XVA of the Act in respect of those goods is in force.

### **ELEMENTS OF S. 8(7)(a) AND/OR 10(8)(a) EXEMPTIONS**

In determining whether the grounds for an exemption under s. 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.<sup>41</sup>

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<sup>41</sup> 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 Commissioner 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 s. 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).<sup>42</sup>

Conversely, the Komodo Group has submitted that the term 'like or directly competitive' should be construed as 'closely like or directly competitive' [emphasis added].<sup>43</sup>

*Commission's assessment*

The term 'like or directly competitive goods' has not been considered by the WTO in the context of the *AD Agreement* or *SCM Agreement* as the concept of 'like or directly competitive' goods does not appear in those agreements (the agreements do not envisage 'exemptions' from anti-dumping measures in the same way that the Dumping Duty Act does in the Australian context)..

However, the Commission notes that the term 'like or directly competitive goods' does appear in Article 2 of the *WTO Agreement on Safeguards* (Safeguards Agreement). Although the Commission notes that caution should be exercised in adopting findings made or guidance available delivered in the context of another WTO agreement to the anti-dumping context (as these agreements deal with different subject matter and are developed for different purposes), the Commission considers that guidance on the WTO's interpretation of 'like or directly competitive goods' in the context of safeguards may offer assistance and instruction to the interpretation of 'like or directly competitive goods' as it appears in s. 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

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<sup>42</sup> Tasman, *Response of the Australian Industry to the Submission of the Importer*, 30 September 2014.

<sup>43</sup> The Komodo Group, *Submission of Products Exemption in Response to Issues Paper 2014/03 of the Commission on Goods and Like Goods*, 27 November 2014.

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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.*<sup>44</sup>

This definition closely reflects the definition of “like goods” found in s. 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 the definition of ‘like goods’ 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.’<sup>45</sup>

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;<sup>46</sup>
- interchangeability and substitutability, or whether the goods provide “alternative ways of satisfying a particular need or taste”;<sup>47</sup> and
- commercial interchangeability of products.<sup>48</sup>

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

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<sup>44</sup> Commonwealth of Australia Special Gazette, No. S 297, 1998 cited by Productivity Commission *Safeguards Inquiry into the Import of Pigmeat*.

<sup>45</sup> WTO, Appellate Body, *Japan – Taxes on Alcoholic Beverages* (DS 8).

<sup>46</sup> *Korea — Alcoholic Beverages* (WT/DS75/AB/R, WT/DS84/AB/R) at 114

<sup>47</sup> *Ibid* at 115

<sup>48</sup> *US — Cotton Yarn*, (WT/DS192/AB/R) at 96-98



*‘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.’<sup>49,</sup>*

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’<sup>50</sup> is central to the determination of their competitive nature in assessing whether products are ‘directly competitive.’

### *Conclusion*

In light of the above, for the purposes of assessing whether an exemption from measures under s. 8(7)(a) or 10(8)(a) of the Dumping Duty Act should be granted, the Commission considers 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 (which would practically involve the same considerations as determining ‘like goods’ in line with the policy and practice outlined in the *Dumping and Subsidy Manual*); or
- a competitive commercial relationship exists between the goods in the marketplace having regard to the commercial uses of the products.

### Need to only satisfy one element

The exemption provisions under s. 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 Commissioner 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.

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<sup>49</sup> *Korea — Alcoholic Beverages* (WT/DS75/AB/R, WT/DS84/AB/R)

<sup>50</sup> *Japan – Taxes on Alcoholic Beverages* at 6.22

## **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 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).

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 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. As a result, the Commissioner is able to make final recommendations to the Parliamentary Secretary in this report in relation to the goods examined for exemption.

Although the Commissioner has indicated in this report whether, on the information currently before him, he recommends to the Parliamentary Secretary that an exemption be granted in relation to cleaner's sinks and hand wash basin (see below), the decision to grant an exemption is discretionary and lies with the Parliamentary Secretary, and hence the Commissioner's recommendations do 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) GENERAL CONSIDERATION OF OFFER AND TERMS OF TRADE**

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

### **III(ii) INDIVIDUALLY-IMPORTED LIPPED LAUNDRY TUBS**

Lipped laundry tubs 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 Commissioner 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.

#### **SUBMISSIONS RECEIVED BY THE COMMISSION – PRE-SEF**

The Commission received various submissions relating to individually-imported lipped laundry tubs prior to publishing its preliminary findings in SEF 238.

These submissions claimed that these products are not the goods subject to the investigation (and 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.

Key arguments raised by uninterested parties in relation to lipped laundry tubs are outlined below.

- 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;

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- 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.<sup>51</sup>*

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 submitted the following.

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<sup>51</sup> Everhard, *Submission by Everhard Industries Pty Ltd in response to submission by the Australian industry*, 11 November 2014.

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- 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 70 litres).<sup>52</sup>
- 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 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))<sup>53</sup>, 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.<sup>54</sup>
- Further, Tasman's inset laundry tubs are interchangeable, and hence directly competitive with lipped laundry tubs, submitting:
  - 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 pre-SEF 238 submissions<sup>55</sup> 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

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<sup>52</sup> Tasman, *Submission of the Australian Industry in Response to Issues Paper 2014/03 – Goods and Like Goods*, 2 December 2014.

<sup>53</sup> 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.

<sup>54</sup> 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.

<sup>55</sup> Refer to Tasman, *Submission of the Australian Industry in Response to Issues Paper 2014/03 – Goods and Like Goods*, 2 December 2014.

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have no top but where the lipped tub itself makes the entire top of the unit once set upon the cabinet.

The Commissioner 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.<sup>56</sup>

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 Commissioner 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.

### **SUBMISSIONS RECEIVED BY THE COMMISSION – POST-SEF**

No submissions have been lodged in response to SEF 238 in relation to individually-imported lipped laundry tubs.

### **COMMISSION’S ASSESSMENT**

#### Are these goods subject to the goods description?

The Commissioner 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 Commissioner 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.

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

The Commissioner 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

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<sup>56</sup> Tasman, *Submission of the Australian Industry in Response to Issues Paper 2014/03 – Goods and Like Goods*, 2 December 2014.

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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 the goods eligible for an exemption under s. 8(7)(b) or 10(8)(aa) of the Dumping Duty Act?

The Commission is not aware of the existence of a TCO that relates to lipped laundry tubs. The provisions of s. 8(7)(b) and 10(8)(aa) of the Dumping Duty Act are not applicable to these goods.

### Are these goods eligible for an exemption under s. 8(7)(a) and 10(8)(a) of the Dumping Duty Act?

The applicability of s. 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 Commissioner has considered whether Tasman's inset tubs are 'like goods' to lipped laundry tubs, in line with the considerations applied by the Commissioner 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 Commissioner 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 an 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:
  - 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

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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 Commissioner 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);<sup>57</sup>
- 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;
  - 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

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<sup>57</sup> For example, see <http://www.harveynormancommercial.com.au/laundry/laundry-tubs.html>.



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- 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 SS CRC, 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 Commissioner 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 s. 8(7)(a) and 10(8)(a)

the Commissioner considers that the requirements of an exemption under the relevant provisions of the Dumping Duty Act are not satisfied, and it recommends that the Parliamentary Secretary not exercise her 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(iii) FREE-STANDING LAUNDRY UNITS

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:

- 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).

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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,<sup>58</sup> 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.

### SUBMISSIONS RECEIVED BY THE COMMISSION – PRE-SEF

Submissions lodged prior to the publication of SEF 238 in relation to free-standing laundry units (flat packed and fully assembled free standing laundry units), argued that either:

- 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; 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 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;<sup>59</sup>
- 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’;<sup>60</sup> 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;<sup>61</sup>

In response, Tasman submitted<sup>62</sup> that it considers that these goods should be subject to the investigation and any subsequent anti-dumping measures. Tasman contends that these 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 further submission and also argued – similarly to the arguments put forward against exemptions for “lipped” tubs – that laundry cabinets are a sub-

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<sup>58</sup> The Commission has verified evidence from importing parties that this is the case.

<sup>59</sup> Seima, *Submission in response to the Issues Paper 2014/03*, 2 December 2014.

<sup>60</sup> Holman Webb on behalf of Shriro, *Response to the Submission made by Tasman against Shriro*, 14 October 2014.

<sup>61</sup> *Ibid.*

<sup>62</sup> *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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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.<sup>63</sup>

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.<sup>64</sup>

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 TI45, TI45S and TI70 products manufactured by Tasman.

Tasman contended 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.<sup>65</sup> GWA further states that these products are ‘commercially like’ to laundry tubs produced by Tasman as they directly compete in the 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.

### SEF 238 FINDINGS

In SEF 238, the Commission preliminarily found that free standing laundry units are not the goods subject to the goods description and hence not subject to anti-dumping measures (therefore there is no need to consider whether they should be exempted from those

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<sup>63</sup> Tasman *Response of the Australian Industry to the Submissions of the Importer (Everhard Industries Pty Ltd)*, dated 30 October 2014.

<sup>64</sup> Tasman *Submission of the Australian Industry in Response to Issues Paper 2014/03 – Goods and Like Goods*, 2 December 2014.

<sup>65</sup> GWA submission dated 3 September 2014.

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measures). This was based on the finding that a free standing laundry cabinet (whether assembled or un-assembled when imported) is not the goods, that is, not:

*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.*

In making this preliminary determination, the Commissioner disagreed that the laundry cabinet that accompanies the sinks should be considered an 'accessory' (as submitted by Tasman), and that the inclusion of a cabinet makes these imported products 'laundry units' and no longer deep drawn stainless steel sinks as covered by the investigation.

### SUBMISSIONS RECEIVED BY THE COMMISSION – POST-SEF

In response to SEF 238, Tasman made a further submission that related to free-standing laundry units.<sup>66</sup> In this submission, Tasman claims included submissions that:

- the Commission is incorrect in its finding that a laundry cabinet is not an 'accessory';
- all pressed bowls must be installed either atop a cabinet or in a bench top to become useable;
- the inclusion of the laundry cabinet is simply a 'more advanced stage of installation' of a pressed bowl that all sinks must eventually achieve;
- the statement that a cabinet cannot be an accessory because it provides a level of functionality that makes the cabinet 'useable at all' rather than an accessory which makes the sink 'more useful' is flawed as taps and waste baskets (plug units) are accepted to be accessories and these are required to make the sinks useable;
- excluding free standing laundry units from the investigation is a circumvention risk, as importers may avoid paying anti-dumping measures by undertaking such activities as:
  - packing regular 'inset' sinks (such as a 1 and ¾ bowl kitchen sink) with an equal number of flat pack cabinets and claiming the goods are excluded;
  - sending individual lipped laundry tubs with only part of the cabinet necessary to make a free-standing laundry unit and therefore import a quantity of lipped laundry tubs without being subject to anti-dumping measures
- in raising concerns about circumvention, Tasman insisted that, if the decision that free standing laundry units are not the goods is upheld, a robust definition and qualification criteria be imposed to ensure compliance with the definition can be monitored and enforced.

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<sup>66</sup> Tasman, *Submission of the Australian industry in response to Statement of Essential Facts No 238*, 12 January 2015.

## **COMMISSION'S ASSESSMENT**

### Are these goods subject to the goods description?

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

The arguments surrounding this issue have focussed on whether:

- the laundry cabinet that is supplied with the lipped laundry tub to make a free standing laundry unit is an 'accessory' in the sense of the goods description, making the imported products a sinks with accessories; or
- the cabinet is not an accessory in the meaning of the goods description and the imported products are no longer a sinks with accessories but something else outside the goods description.

Much of the debate on this has been an examination of the natural meaning of the word 'accessory', however the Commissioner considers that, in the context of the investigation, it is more reasonable to examine what the term 'accessory' means in the context of the sinks industry, than the dictionary definition of the word.

The Commissioner has considered this issue and determines that the imported products contain a significant number of additional elements other than a deep drawn stainless steel bowl and 'accessories', and has determined that, as a result, 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 free-standing cabinet that lipped laundry tubs sit atop of to make a free standing laundry unit should not be considered 'accessories' in the context of the sinks market.

The Commissioner has found that 'accessories' in the context of the sinks market are generally accepted to include chopping boards, taps, colanders, bowl protectors, utility trays and drainer baskets. In some cases, basket wastes (plugs) and drainage pipes that are routinely provided with the sink are also considered to be 'accessories' by parties when it comes to internal classification and accounting.

Throughout its investigations with exporters and importers, the Commission has not seen any evidence of these parties classifying a laundry cabinet used to make a free standing laundry unit as an 'accessory'.

Further, the Commissioner considers that, 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'. This is clearly an absurd and illogical finding.

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Consequently, the Commissioner 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 Commissioner observes Tasman's circumvention concerns, but observes that the Commission's advice to importing parties will be 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 whole 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 consisted 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.

Failure to comply with this direction will amount to the making of a false declaration to ACBPS when entering the goods, and is considered no greater of a circumvention risk than importers making other false declarations that their products are not subject to the anti-dumping measures as they are not 'the goods', such as in cases where a sink is declared to be 6 liters in capacity (and hence too small to be covered by the measures) when in fact it is 30 liters capacity. This fraudulent activity is routinely monitored by ACBPS.

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

This 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(iv) CLEANER'S SINKS AND HAND WASH BASINS**

### **SUBMISSIONS RECEIVED BY THE COMMISSION – PRE-SEF**

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 Commissioner understands that cleaner's sinks are generally comprised of a stainless steel bowl, which may be deep drawn<sup>67</sup> 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.

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<sup>67</sup> Where the bowl is fabricated the Commissioner notes the goods are specifically excluded from the investigation due to the nature of the bowl.

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It is understood that hand wash basins generally are made of a deep drawn stainless steel bowl<sup>68</sup> 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.

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 40 millimetre (mm) sized outlets (drains) as opposed to the standard 50mm or 90mm of other sinks; and
  - in the case of hand wash basins being 15.5 litres 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 (Stoddart Manufacturing) 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 TCO in relation to these imported products and pursue an exemption based on this TCO<sup>69</sup>, rather than an exemption on ‘any broader description or basis’.

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<sup>68</sup>As with cleaner’s sinks, these may be of a fabricated nature and are thus specifically excluded from the investigation.

<sup>69</sup> In accordance with s. 8(7)(b) and 10(8)(aa) of the Dumping Duty Act.

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In its response to *Issues Paper 2014/03*,<sup>70</sup> 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 s. 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 Commissioner has assessed each separately below.

### SUBMISSIONS RECEIVED BY THE COMMISSION – POST-SEF

Following the publication of SEF 238, Stoddart Manufacturing submitted a formal request for a ministerial exemption of certain cleaner's sinks and hand wash basins under s. 8(7)(b) and 10(8)(aa), based on the fact that ACBPS has granted tariff concession orders (TCO) in relation to certain deep drawn stainless steel cleaner's sinks and certain deep drawn stainless steel hand wash basis (TCO TC 1436584 and TC 1436587 refer). These TCOs are effective as of 12 January 2015.<sup>71</sup>

### COMMISSION'S ASSESSMENT – CLEANER'S SINKS

In addition to Stoddart Manufacturing's request for a TCO-based exemption request, the Commissioner notes that another importer has requested that the goods be exempted from measures based on like or directly competitive goods considerations.

The Commissioner notes that the parameters of TC 1436584 relate to specific sub-sets of cleaner's sinks, while the claims made by the other importing party in relation to like or directly competitive goods considerations relate to cleaner's sinks in general (i.e. broader than the TCOs, but also covering the sub-sets of the TCOs). See below for more details on each TCO.

For this reason, the Commissioner has primarily considered the applicability of an exemption under Sections (8)(7)(a) or 10(8)(a) that relates to the broader category of all cleaner's sinks.

Are these goods subject to the goods description?

The Commissioner 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

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<sup>70</sup> Tasman *Submission of the Australian Industry in Response to Issues Paper 2014/03 – Goods and Like Goods*, 2 December 2014.

<sup>71</sup> Stoddart Manufacturing, *Application for a Ministerial Exemption – Cleaner's sinks pursuant to TC 1436584 & Hand Wash Basis pursuant to TC 1436587*, 4 February 2015



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drawn stainless steel sinks of a certain capacity (regardless of them including additional components).

The Commissioner 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 the goods eligible for an exemption under s. 8(7)(b) or 10(8)(aa) of the Dumping Duty Act?

The Commissioner is aware of the existence of TC 1436584, effective as of 12 January 2015.

As explained above, the above named TCO applies to a very specific sub-set of cleaner's sinks (e.g. length of 555mm, etc.), while submissions to the investigation relate to cleaner's sinks generally.

As outlined in the below section of this appendix, the Commissioner considers that all cleaner's sinks covered by the goods description are eligible for a ministerial exemption from anti-dumping measures based on the fact that the Australian industry does not produce like or directly competitive goods to those cleaner's sinks. A ministerial exemption in relation to all cleaner's sinks is thus recommended under s. 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

The Commissioner considers this overrides the need for an extension to be granted under s. 8(7)(b) or 10(8)(aa).

### Are these goods eligible for an exemption under s. 8(7)(a) and 10(8)(a) of the Dumping Duty Act?

The applicability of s. 8(7)(a) and 10(8)(a) of the Dumping Duty Act have been considered in relation to cleaner's sinks.

The Commissioner understands the following.

- Physical likeness:
  - 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 Commissioner 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.

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- 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:
  - both Tasman's sinks and cleaner's sinks can be used for the same purpose of storing and draining water for environmental cleaning purposes, 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.

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- 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 SS CRC, 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 Commissioner considers that the Australian industry does not produce 'like goods' to cleaner's sinks<sup>72</sup>. 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 Commissioner considers that the requirements of an exemption under the relevant provisions of the Dumping Duty Act are satisfied, and it recommends that the Parliamentary Secretary exercise her 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 Commissioner recommends 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.*

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<sup>72</sup> In SEF 238, the Commission referred in error to "lipped laundry tubs" when discussing whether cleaner's sinks were produced by the Australian industry.

**COMMISSION'S ASSESSMENT – HAND WASH BASINS**

As with cleaner's sinks, the TCO applicable to hand wash basins (TC 1436587) covers a specific sub-set of those products, while another importer has requested the Commission exempt hand wash basins from anti-dumping measures based on there being no like or directly competitive goods in Australia (i.e. through operation of 8(7)(a) and 10(8)(a) of the Dumping Duty Act). For this reason, the Commission has primarily considered the applicability of an exemption under Sections (8)(7)(a) or 10(8)(a) that relates to the broader category of all cleaner's sinks.

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 Commissioner 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 the goods eligible for an exemption under s. 8(7)(b) or 10(8)(aa) of the Dumping Duty Act?

The Commission is aware of the existence of TC 1436587, effective as of 12 January 2015. This TCO applies to:

*WASH BASINS, HAND, stainless steel, complying with American Society for Testing and Materials standard ASTM A959 - 11, Type 304, having ALL of the following:*

- (a) basin length 500 mm;*
- (b) basin width 420 mm;*
- (c) basin depth 246 mm;*
- (d) basin thickness 0.8 mm;*
- (e) basin perimeter fascia 50 mm deep;*
- (f) basin rear splash back 70 mm high*

No party has applied to the Commission for a ministerial exemption in relation to the hand wash basins based on the existence of this TCO, however this does not preclude the Parliamentary Secretary from granting an exemption in relation to goods covered by the TCO.

The above named TCO applies to a very specific sub-set of hand wash basins (e.g. length of 500mm, etc.), while submissions to the investigation relate to hand wash basins generally.

As outlined in the below section of this appendix, the Commissioner considers that all hand wash basins covered by the goods description are eligible for a ministerial exemption from anti-dumping measures based on the fact that the Australian industry does not produce like or directly competitive goods to those cleaner's sinks. A ministerial exemption in relation to all

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hand wash basins is thus recommended under s. 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

The Commissioner considers this overrides the need for an exemption to be granted under s. 8(7)(b) or 10(8)(aa).

Are these goods eligible for an exemption under s. 8(7)(a) and 10(8)(a) of the Dumping Duty Act?

The applicability of s. 8(7)(a) and 10(8)(a) of the Dumping Duty Act have been considered in relation to hand wash basins.

The Commissioner 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 Commissioner 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;'
  - 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;

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- 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 wash 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
  - 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 SS CRC, 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.

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On the balance of factors discussed above and information available, the Commissioner considers that the Australian industry does not produce 'like goods' to hand wash basins<sup>73</sup>. 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 Commissioner recommends that the Parliamentary Secretary exercise her 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 Commissioner is required to recommend a description of the goods that the Parliamentary Secretary should exempt from anti-dumping measures. The Commissioner recommends the following description of exempted goods:

*Hand wash basins that are comprised of:*

- *a deep drawn stainless steel bowl with a rounded or concave basin bottom (i.e. not flat-bottomed); and*
- *a stainless steel splash back or upturned rear edge that is designed for fixture against a wall.*

### **III(v) 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

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<sup>73</sup> In SEF 238, the Commission referred in error to "lipped laundry tubs" when discussing whether hand wash basins were produced by the Australian industry.

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received a formal request for an exemption for these types of sinks under s. 8(7)(a) and 10(8)(a) of the Dumping Duty Act from Abey.<sup>74</sup> 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;
- 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);<sup>75</sup>
- substitution of products from 'normal' sinks to tight corner radius sinks is not typical;<sup>76</sup>
- 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);

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<sup>74</sup> Dated 13 October 2014.

<sup>75</sup> Abey, *Issues Paper 2014/30: Submission by Abey Australia Pty Ltd*, 2 December 2014.

<sup>76</sup> Siema Pty Ltd, *Response to Issues Paper 2014/03*, 2 December 2014.



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- 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, the Komodo Group, contends should be the required test for an exemption under the relevant provisions of the Dumping Duty Act);<sup>77</sup>

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.<sup>78</sup>

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 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

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<sup>77</sup> Komodo, *Submission of Products Exemption in Response to Issues Paper 2014/03 of the Commission on Goods and Like Goods*, 27 November 2014.

<sup>78</sup> 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).

of these sinks and other deep drawn stainless steel sinks to focus on maintaining and supporting its Australian manufactured range.<sup>79</sup>

## **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 Commissioner has assessed whether s. 8(7)(a) and 10(8)(a) of the Dumping Duty Act apply to tight corner radius sinks.

The Commissioner 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:
  - 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);

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<sup>79</sup> Tasman, email submission of 4 December 2014.

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- 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 SS CRC (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 Commissioner 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.

The Commissioner 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

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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 Commissioner considers that there is likely to also be commercial 'overlap' between traditional deep drawn stainless steel sinks and tight corner radius sinks. The Commissioner 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 Commissioner 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 s. 8(7)(a) and 10(8)(a) of the Dumping Duty Act do not apply. In coming to this assessment, the Commissioner notes that there exists physical, function, commercial and production likeness between these products.

The Commissioner does not recommend to the Parliamentary Secretary that she grant an exemption from anti-dumping measures in relation to tight corner radius deep drawn stainless steel sinks.

## NON-CONFIDENTIAL APPENDIX 3 – ASSESSMENT OF A MARKET SITUATION

### PART I TASMAN'S APPLICATION

As outlined in Chapter 6, Tasman's application alleges that Chinese domestic selling prices for deep drawn stainless steel sinks are:

- artificially low; and/or
- a particular market situation exists in the Chinese deep drawn stainless steel market that renders domestic selling prices of like goods unsuitable for determining normal values under s. 269TAC(1) (based on domestic selling prices).

Key elements of Tasman's allegations of a market situation are as follows.

- GOC involvement in the Chinese domestic steel market has 'materially distorted competitive conditions, in terms of input costs...namely [for] cold-rolled stainless steel sheet'<sup>80</sup> and this has resulted in 'artificially low' prices of deep drawn stainless steel sinks on the domestic Chinese market.
- A major GOC influence on input costs is the provision of the main raw material input into deep drawn stainless steel sinks (304 SS CRC) to Chinese exporters by state-invested enterprises (SIEs) at less than fair market value (also a key aspect of Tasman's claims in relation to countervailable subsidisation – see Chapter 7).
- There are numerous other areas of GOC involvement that contribute to there being a market situation. In particular, the Canada Border Services Agency (CBSA) 2012 investigation into certain pup joints exported from China<sup>81</sup> identified that a number of GOC policies and five-year plans were 'found to have influenced the Chinese steel industry'.

In making these claims, Tasman submits that the reasonableness of the costs of 304 SS CRC incurred by exporters has been impacted by GOC influence in the Chinese iron and steel industry, and that this has in turn created a market situation in the market for the finished products (deep drawn stainless steel sinks).

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.

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<sup>80</sup> The Commissioner understand that this input is supplied either in coil for or already slit in to sheets as referred to here by Tasman

<sup>81</sup> 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 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).

In light of these claims, the application submits that:

- normal values should be constructed under s. 269TAC(2)(c); and
- when constructing these normal values, the costs incurred by exporters for 304 SS CRC should be considered to not be reasonably reflective of competitive costs for that input, and substituted with a surrogate (MEPS 'world composite') price (i.e. the Commission should consider these cost unreasonable for the purpose of Regulation 180(2) and replace them with a surrogate).

## **PART II FOCUS OF APPENDIX – MARKET SITUATION**

As outlined above, the arguments submitted by Tasman's application in effect claim:

1. GOC influence in the domestic steel market have distorted stainless steel prices, creating a market situation in relation to deep drawn stainless steel sinks and constructed normal values should be used as a result;
2. when constructing normal values, the GOC influences that distort stainless steel prices render the costs of stainless not reasonably reflective of competitive market costs for the purposes of Regulation 180(2) and these should be replaced with a surrogate.

The questions of market situation and whether costs are reasonable for the purposes for Regulation 180(2) are separate and distinct questions. However, Tasman's allegations in relation to deep drawn stainless steel sinks for both purposes are focussed on GOC influences in the Chinese iron and steel industry that it alleges have rendered the cost of the raw materials incurred by manufacturers of deep drawn stainless steel sinks to be distorted or unreasonable. Consequently, there is considerable overlap between these assessments.

This appendix focusses on whether a particular market situation is found to have existed in the Chinese domestic stainless steel sinks market, while Non-Confidential Appendix 4 specifically addresses the question of costs reasonableness for the purposes of Regulation 180(2). As outlined in PART V(i) of this appendix, the bulk of the Commission's consideration of the GOC's influences on stainless steel costs in China is located in Non-Confidential Appendix 4.

## **PART III APPLICABLE LEGISLATION, POLICY AND PRACTICE**

### **III(i) THE ACT**

Section 6.4 of this report introduced the provisions of s. 269TAC(2)(a)(ii), which provides that 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 Section (1)*

the normal value for goods exported to Australian cannot be ascertained under s. 269TAC(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<sup>82</sup> or third country sales.<sup>83</sup> Therefore, a determination as to whether there is a market situation has potential consequences for the assessment of normal value and dumping margins.

### III(ii) POLICY AND PRACTICE

In relation to market situation, the *Dumping and Subsidy Manual* states:

*In considering whether sales are not suitable for use in determining a normal value under s. 269TAC(1) because of the situation in the market of the country of export the Commission may have regard to factors such as:*

- *whether the prices are artificially low; or*
- *whether there are other conditions in the market which render sales in that market not suitable for use in determining prices under s. 269TAC(1).*

*Government influence on prices or costs could be one cause of “artificially low pricing”. Government influence means influence from any level of government.*

*In investigating whether a market situation exists due to government influence, the Commission will seek to determine whether the impact of the government’s involvement in the domestic market has materially distorted competitive conditions. A finding that competitive conditions have been materially distorted may give rise to a finding that domestic prices are artificially low or not substantially the same as they would be if they were determined in a competitive market.*

*One example of government influence distorting competitive conditions and leading to artificially low prices may be the presence of government owned enterprises in the domestic market. The presence of government owned enterprises, of itself, may not lead to the conclusion that sales are unsuitable. Rather, market conditions will no longer be said to prevail when the number of government owned enterprises, together with any unprofitable sales by those same enterprises, has caused a significant distortion to the prices received by private enterprises.*

*Prices may also be artificially low or lower than they would otherwise be in a competitive market due to government influence and distortion of the costs of inputs. Again the mere existence of any government influence on the costs of inputs would not be enough to make sales unsuitable. Rather, the Commission looks at the effect of this influence on market conditions and the extent to which domestic prices can no longer be said to prevail in a normal competitive market. It should be noted government influence on costs can only disqualify the sales if those costs can be shown to be affecting the domestic prices.*

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82 s. 29TAC(2)(c)  
83 s. 269TAC(2)(d)

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*Thus, a range of conditions concerning the sales themselves may have the effect of rendering those sales prices as being unsuitable for use in determining prices under s. 269TAC(1).*

The assessment as to whether a market situation exists in a market constitutes a positive test. That is, before actual selling prices are rejected, the Commission needs to be satisfied that there is a 'market situation' that renders the sales of like goods in the domestic market not suitable for normal value purposes. Where there is influences in the market, but the sales of like goods in that market are not considered to be rendered unsuitable for determine s. 269TAC(1) normal values, then s. 269TAC(2)(a)(ii) does not apply.

## PART IV INTERESTED PARTY CLAIMS

Throughout the investigation, the Commission has received submissions from various interested parties that relate to the assessment of the existence of a particular market situation in the Chinese deep drawn stainless steel market. Some of these submissions refer directly to the Commission's assessment of costs reasonableness for determining normal values in line with Regulation 180 (which, as outlined above, is a separate question to the whether a market situation existed in the domestic deep drawn stainless steel sinks market). However, as Tasman's market situation claims rely on the assertion that the cost of 304 SS CRC in China is distorted and this has had the flow-on impact of a market situation, these submissions are examined in this appendix.

### IV(i) GOC CLAIMS

Following initiation of the investigation, the Commission wrote to the GOC outlining Tasman's market situation and steel raw materials allegations, and requested the GOC complete a *Government Questionnaire* to assist the Commission's investigation into these allegations. The *Government Questionnaire* also requested information from the GOC relevant to the Commission's assessment of countervailable subsidisation (see Chapter 7 and Non-Confidential Appendix 8).

The GOC responded to the *Government Questionnaire* but 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 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 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,<sup>84</sup> the GOC restated its position on the reasonableness of stainless steel costs in China in a submission dated 19 September 2014, submitting that:

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<sup>84</sup> At that stage no preliminary market situation assessment was made but it was preliminarily determined by the Commission that costs incurred by Chinese exporters should be replaced under Regulation 180(2) in determining normal values.



## PUBLIC RECORD

- 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 the ACBPS 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 HSS<sup>85</sup> 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;<sup>86</sup>
- 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; and
- 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 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.

### IV(ii) SUBMISSIONS BY OTHER INTERESTED PARTIES

In its submission of 22 July 2014, the Komodo Group put forward its views in relation to Tasman's claims of the existence of a 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.

The Komodo Group submitted that:

- the GOC 'cannot' influence the market through supply of stainless steel sheet by state-owned enterprises as:

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<sup>85</sup> Hollow structural sections

<sup>86</sup> The Commissioner 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>

## PUBLIC RECORD

- 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 violate 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, the Komodo Group 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 did not reasonably reflect competitive market prices apply to stainless steel in the context of this investigation.

## **PART V COMMISSION'S ASSESSMENT**

### **V(i) IS THE COST OF COLD ROLLED STAINLESS STEEL COIL UNREASONABLE?**

For the purposes of assessing how to calculate the cost of manufacture the goods and like goods in line with Regulation 180(2) when determining normal values, the Commissioner has examined the reasonableness of the costs incurred by Chinese exporters of the goods in purchasing 304 SS CRC in China. The details of this assessment are in Non-Confidential Appendix 4 of this report.

Following this assessment, the Commissioner has determined that the costs incurred by Chinese exporters of the goods in purchasing 304 SS CRC in China do not reasonably reflect competitive market costs, due to the numerous identified influences of the GOC in the domestic iron and steel industry.

This supports Tasman's allegations that the cost of this input in China has been distorted, which Tasman has relied on to assert that a market situation for deep drawn stainless steel sinks has resulted.

## **V(ii) HAS A MARKET SITUATION RESULTED?**

Having determined that GOC influence in the Chinese steel sector has rendered the cost of 304 SS CRC to no longer reasonably reflect competitive market costs (as alleged by Tasman in its application), the Commissioner has then considered whether this leads to a finding that a market situation exists in relation to the Chinese domestic deep drawn stainless steel sinks market that renders selling prices of those products in China unsuitable for determining normal values under s. 269TAC(1).

It is the Commission's finding that there is not sufficient evidence to conclude that a market situation exists in the Chinese domestic deep drawn stainless steel sinks market that renders sales of like goods unsuitable for determining normal values under section 269TAC(1).

In coming to this conclusion, the Commissioner highlights the following practice detailed in the *Dumping and Subsidy Manual*, which states:

*the mere existence of any government influence on the costs of inputs would not be enough to make sales unsuitable. Rather, the Commission looks at the effect of this influence on market conditions and the extent to which domestic prices can no longer be said to prevail in a normal competitive market. It should be noted government influence on costs can only disqualify the sales if those costs can be shown to be affecting the domestic prices.*

Although satisfied that government influence has distorted the cost of 304 SS CRC steel incurred by Chinese exporters of the goods, the Commissioner is not satisfied that this has impacted the domestic selling prices of deep drawn stainless steel sinks to such an extent that those prices are no longer suitable for determining section 269 TAC(1) normal values.

In making this assessment, the Commissioner notes the following.

- the distorted input (304 SS CRC) represented on average 45% to 55% of the total cost to manufacture incurred by Chinese deep drawn stainless steel sink manufacturers.

Although this is considered to reflect a significant proportion of the cost to manufacture the goods, it is considerably lower than the proportion of the cost to manufacture represented by distorted raw materials in the production of HSS, hot rolled plate steel, galvanised steel and aluminium zinc coated steel, all of which were found to be subject to have particular market situations in China during the Commission's investigations into each product. In these cases, the percentage of total costs represented by distorted raw materials was significantly higher, and hence more likely to have a 'flow on' effect of rendering selling prices of the manufactured product unsuitable for determining normal values.

## PUBLIC RECORD

- The difference between the reasonably competitive market cost determined by the Commission for 304-SS CRC<sup>87</sup> (see Non-Confidential Appendix 4 and Non-Confidential Appendix 8 for discussion) and the costs actually incurred by Chinese exporters of the goods is on average 10% (i.e. Chinese-incurred costs are 10% lower than the reasonably competitive market cost for 304 SS CRC).

This uplift, while significant, is substantially lower than uplifts to steel raw material costs observed by the Commission in its investigations into other Chinese steel products. When combined with the consideration that this is a 10% uplift to a cost that is approximately 45 – 55% of total manufacturing costs, the Commission considers this does not provide strong evidence that the impact of distorted stainless steel costs has had the impact of creating a market situation in the deep drawn stainless steel sinks market (i.e. it is likely that this distorted input has not impacted the price of deep drawn stainless steel sinks to such an extent that domestic prices of those goods are no longer suitable for use in determining normal value).

- Even when the abovementioned uplift to incurred raw material costs is applied to the costs to manufacture, ordinary course of trade tests performed on Chinese exporters' data for domestic sales have found that:
  - a sufficient volume of domestic sales were still made in the ordinary course of trade by exporters; and
  - Chinese exporters still achieved considerable levels of profit on the domestic market.

The above suggests that the distorted raw material input has not had the impact of rendering domestic sales of deep drawn stainless steel sinks unsuitable for determining section 269TAC(1) normal values.

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<sup>87</sup> Ascertained as an average of European and North American MEPS prices for that coil – see Non-Confidential Appendix 9

## NON-CONFIDENTIAL APPENDIX 4 – ASSESSMENT OF REASONABLENESS OF STAINLESS STEEL COSTS IN CHINA AND DETERMINATION OF A COMPETITIVE MARKET SUBSTITUTE PRICE

### PART I BACKGROUND

#### I(i) APPLICABLE LEGISLATION

As outlined in Section 6.4.3, when determining normal values based on domestic sales; a cost-based construction; or third country sales, 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.

In the context of normal values based on domestic or third country sales, costs of manufacture are relevant when determining the cost to make and sell used to apply to ordinary course of trade tests to identify suitable sales. When determining constructed normal values, costs of manufacture are relevant in determining the cost to make and sell to be used as a basis of this construction, and in determining cost to make and sell to be used to conduct ordinary course of trade tests on domestic sales to determine a reasonable amount of profit (in line with regulation 181A – see Section 6.4).

As outlined in Chapter 6 of this report, the Commissioner has determined normal values based on:

- domestic sales (certain Zhuhai Grand models); and
- costs-based construction (all other normal values).

Consequently, the determination of exporters' costs to manufacture relate directly to each normal value adopted by the Commission in this report in one way or another.<sup>88</sup>

#### I(ii) TASMAN'S CLAIMS

PART I of Non-Confidential Appendix 3 details Tasman's claims in relation to the reasonableness of Chinese stainless steel costs.

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<sup>88</sup> For ordinary

These claims conclude with Tasman's submission that:

- the cost of stainless steel incurred by Chinese exporters are not reasonably reflective of competitive market costs;
- consequently, stainless steel costs incurred by Chinese exporters of the goods should be replaced by the Commission with a substitute cost (submitting that a MEPS 'world composite' is an appropriate substitute).

## **PART II 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). The *Verification Visit Reports* of each selected exporter have assessed this issue.

The Commissioner notes that there has been no suggestion that Chinese exporters' records do not comply with the applicable GAAP during this investigation.

## **PART III ASSESSMENT OF COSTS REASONABLENESS – STAINLESS STEEL COIL**

### **III(i) INTERESTED PARTY CLAIMS**

Details of submissions made to the Commission in relation to Chinese stainless steel costs are outlined at PART IV of Non-Confidential Appendix 3.

### **III(ii) COMMISSION'S ASSESSMENT**

In light of the GOC's failure to provide direct responses to Parts A and B of the *Government Questionnaire*, the Commissioner considers that it must rely on all information reasonably available to it in order to make an assessment as to the reasonableness of exporters' incurred costs of stainless steel.

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 s. 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 s. 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).

## PUBLIC RECORD

In all cases discussed above where an assessment was made that domestic sales were not suitable for use in determining normal values under s. 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 s. 269TAC(2)(c) should be used.

In each case, when constructing normal values under s. 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 14** 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 304 SS CRC. 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 304 SS CRC).

The Commission has undertaken research into the manufacturing process of 304 SS CRC 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 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 towers<sup>89</sup>. Specifically, HRC, hot rolled plate and 304 SS CRC 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 304 SS CRC and HRC or hot rolled plate steel is that the steel slabs used to make 304 SS CRC contain a high level of chromium (at least 11.5%) 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 Commissioner 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 304 SS CRC, or to their upstream suppliers of steel and steel raw materials.

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<sup>89</sup> 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>).

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)<sup>90</sup>, 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 Commissioner considers it reasonable to find, at the very least, that manufacturers of 304 SS CRC and their upstream manufacturers of steel and steel inputs are part of the iron and steel industry.

### **III(iii) CONCLUSION**

The Commissioner 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 Commissioner considers the costs incurred by deep drawn stainless steel sinks manufacturers in China for 304 SS CRC used in the investigation period do not reasonably reflect competitive market costs in terms of Regulation 180(2).

## **PART IV DETERMINING A REASONABLY COMPETITIVE MARKET COST SUBSTITUTE FOR STAINLESS STEEL**

After determining that the cost of stainless steel (specifically 304 SS CRC) incurred by Chinese exporters of the goods is not a reasonably competitive market cost for the purposes of Regulation 180(2), the Commissioner has sought to establish an appropriate benchmark for stainless steel, having regard to the guidelines set out in s. 269TACC(4)(d) and (5) of the Act, and Article 14(d) of the *SCM Agreement*.

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<sup>90</sup> GOC response to the deep drawn stainless steel sinks *Government Questionnaire*, Attachment A11.



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 Commissioner 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 average price using the monthly reported MEPS North American and European prices of 304-grade cold rolled 304 SS CRC.

Details of this benchmark and the assessment of other possible benchmarks are detailed in Non-Confidential Appendix 8.

## **PART V ASSESSMENT OF COSTS REASONABLENESS – REVENUE FROM STAINLESS STEEL SCRAP**

### **V(i) SUBMISSION BY JIABAOLU**

In a submission dated 17 September 2014, and reiterated in its submission in response to SEF238<sup>91</sup> Jiabaolu submitted that, because the Commission had determined that the stainless steel purchase prices did not reasonably reflect competitive market costs, the Commission should 'logically determine' that:

- the scrap price achieved by exporters when selling scrap<sup>92</sup> has also been affected by the interventions of the GOC; and
- the Commission should therefore find that the prices achieved by exporters are not reasonably reflective of competitive market costs; and
- the actual price received for scrap should be discarded and the same uplift calculation applied to stainless steel inputs be applied to the scrap price.

This claim is raised as the costs of stainless steel incurred by exporters (used for determining normal values) have been 'offset' by revenue generated by exporters when selling stainless steel scrap, and Jiabaolu believes that the value of this offset should be amended by the Commission in the same way that the cost of its stainless steel raw materials.

Jiabaolu submits that, to implement the uplift, the Commission should apply the same MEPS-based benchmark used to determine a reasonably competitive market price for stainless steel inputs. Considering this MEPS-based average is for 304 SS CRC and not 304 stainless steel scrap (which is what is being sold by exporters in China and would logically be with less than 304 SS CRC), the Commission considers that Jiabaolu is in effect submitting that the percentage difference between the 304 SS CRC benchmark and the price of that input incurred by exporters should be applied to the revenue generated by exporters in selling scrap stainless steel.

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<sup>91</sup> Jiabaolu, *Comments on Statements of Essential Facts (No.238) and the proposal of price undertaking*, 12 January 2015.

<sup>92</sup> Generated as part of the manufacturing process (off-cuts of stainless steel sheet)

## V(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 Commissioner 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 Commissioner has had regard to other information available.

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 Commissioner 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 Commissioner 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.

## PUBLIC RECORD

During its pre-initiation consultations with the GOC, the GOC provided information from World Steel Dynamics<sup>93</sup> 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 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.

### V(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 Commissioner has had regard to other information available. The Commissioner 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.

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<sup>93</sup> "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

## NON-CONFIDENTIAL APPENDIX 6 – CONSIDERATION OF EXPORTER SUBMISSIONS OF NORMAL VALUE CALCULATIONS

### PART I INTRODUCTION

This appendix examines exporter-specific submissions made in relation to the manner in which the Commission has calculated specific aspects of normal values in relation to each of the three selected cooperating exporters for the purposes of SEF 238.

For clarity, this discussion does not include consideration of the following matters relevant to determining normal values, which are discussed individually in this report:

- the determination of a reasonable profit for constructed normal values (discussed separately in 6.11);
- the calculation of the benchmark price for 304 SS CRC applied to exporter stainless steel costs (discussed in detail Appendix 8 in the context of determining a benchmark for adequacy of remuneration under subsidy Program 1, but this benchmark was also applied in determining exporters' cost to make and sell in the context of the dumping investigation,<sup>94</sup> as detailed at Section 6.10.1 of this report).

Prior to the publication of SEF 238, the Commission received numerous exporter-specific submissions relating to the calculation of exporters' normal values. Detailed discussion and analysis of those submission was undertaken in Chapter 6 of SEF 238, and the particulars of each have therefore not been repeated in this report unless directly relevant to assessing the post-SEF 238 submissions. Where these matters are not mentioned in this report, it can be assumed that the approach to each issue outlined in SEF 238 is unchanged for the purposes of this report.

### PART II PRIMY – SG&A COSTS ALLOCATION

#### II(i) BACKGROUND AND SUBMISSIONS

In SEF 238, the Commission preliminarily determined that the most reasonable method of allocating SG&A expenses incurred by exporters of the goods in calculating their cost to make and sell for the purposes of determining normal values was by units of sinks sold.

This SEF 238 determination was due to the fact that the Commission considered the other available methods of allocation were less reasonable than a units-based approach. In coming to this conclusion, SEF 238 noted (at Section 6.8.2), when considering the usual method of allocation (revenue):

*...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*

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<sup>94</sup> Applicable to determining the costs of production in constructed normal values and when determining exporters' cost to make and sell for performing ordinary course of trade tests.

## PUBLIC RECORD

*the final user/installer, this is not borne by the manufacturer, but rather entities further down the distribution chain).*

In reviewing Primy's preliminary SG&A costs calculations in the company's *Verification Visit Report* for the purposes of SEF 238, the Commission became aware of the fact that Primy's SG&A expenses used in the dumping calculations of the *Verification Visit Report* were allocated based on sales revenue, and not units. Consequently, amendments were made to Primy's SG&A expenses allocation for the purposes of SEF 238 to allocate Primy's SG&A expenses based on total sink units (see Section 6.8.3 of SEF 238).

In making these amendments for SEF 238, the Commission found that it was not in possession of verified sales units for all of Primy's sinks during the investigation period (i.e. the Commission possessed 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, was used to allocate SG&A expenses.

### **II(ii) RESPONSE TO SEF 238**

Primy lodged a submission to the Commission<sup>95</sup> in response to the changes to allocating Primy's SG&A expenses in SEF 238.

In this submission Primy claimed that:

- the change in methodology between the company's *Verification Visit Report* and SEF 238 was made without consultation with Primy, which is a denial of natural justice;
- during the verification visit (reflected in the company's *Verification Visit Report*), Primy was advised that it is the Commission's preference to allocate SG&A expenses by revenue and Primy was not advised of the potential change of this approach;
- the fact that the Commission did not have verified records of Primy's sales units of all goods (hence production units were used to allocated SG&A expenses by unit) is a failing of the Commission's questionnaire and verification process rather than Primy's failure to provide this information, and Primy should not be disadvantaged by this;
- the allocation of all of Primy's SG&A expenses to sinks based on sinks units does not factor in the fact that Primy does not only make sales of sinks but other products as well (particularly faucets/taps) and some of the expenses should reasonably be allocated to these sales as Primy incurs these expenses in relation to those products as well; and
- the approach to allocating SG&A expenses taken in the company's *Verification Visit Report* (i.e. by revenue) remains a reasonable approach, however if the Commissioner considers that units should be used, then the units of other products must be incorporated in the approach.

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<sup>95</sup> Primy, *Statement of Essential Facts Submission on Dumping Margin Calculation*, undated (submitted 8 January 2015).

## **PUBLIC RECORD**

In addition, Primy provided several 'options' and additional supporting data that it suggests the Commission could use to allocate the SG&A expenses as opposed to the approach taken in SEF 238. Specifically:

- 1) determining a ratio of production of sinks out of all production units using a base month (data provided for October), using this ratio to allocate total SG&A costs to sinks, and then allocating the SG&A amongst sinks by units;
- 2) performing the same calculation based on a yearly ratio of sinks to total production units;
- 3) allocating SG&A between sinks and taps based on production value and then allocating the expenses to sinks per unit; and
- 4) returning to the revenue-based allocation of the *Verification Visit Report*.

### **II(iii) COMMISSION'S ASSESSMENT**

#### **NATURAL JUSTICE AND CHANGE TO VISIT REPORT APPROACH**

The Commissioner acknowledges that the approach in SEF 238 to the allocation of Primy's SG&A expenses deviated from that in the company's exporter *Verification Visit Report*, and that Primy was not informed of the changes prior to SEF 238. However, the Commissioner does not consider that Primy was denied natural justice by this approach, or that the Commission indicated to Primy that the findings in the *Verification Visit Report* were final and not open to change.

Primy's (and all other) *Verification Visit Report* was clearly labelled a preliminary report, and the report noted that the findings in that report were subject to change by case management. This would have signified to Primy that it should not consider the findings of that report final, and that a change in approach to that taken in the *Verification Visit Report* was a possibility.

Further, the fact that Primy, like all other interested parties, was provided with the opportunity to respond to the changes notified in SEF 238, and the Commission has examined this response and incorporated it in to the final findings in this report, demonstrates that Primy has been afforded the opportunity to defend its interests in this matter, in accordance with the established practice and legislative requirements of anti-dumping and countervailing investigations under the Act.

#### **USE OF PRODUCTION VOLUME DATA**

Primy appears to be concerned that the Commission's use of production volumes (due to the Commission not having access to complete sales units data, the preferred unit data for allocating SG&A) in re-allocating the company's SG&A costs served to 'disadvantage' Primy.

This was not the intention of the Commission in undertaking its re-allocation using production data, but considered to be the most reasonable data available to the Commission noting the limitations of data collected with Primy and the known limitations of Primy's accounting and sales system in generating accurate sales data (heavily reliant on manual processes). The Commission adopted this production data after considering that production units, while not

being exactly the same as sales units, would roughly equate to sales units (confirmed by the Commission's examination of the available production and sales data from Primy).

The Commission continues to consider production volumes a reliable and appropriate volume to base unit allocations of these expenses on, in the absence of complete sales volume data.

### **APPROPRIATE ALLOCATION METHODOLOGY**

As outlined in SEF238, exporters of deep drawn stainless steel sinks (including Primy) sell numerous models of deep drawn stainless steel sinks that have a wide range of selling prices, often with high-end models being sold for well over double the price of base models. Consequently, a revenue-based allocation would allocate high levels of SG&A to more expensive sinks and likewise low levels of SG&A to cheaper base-model sinks (and throughout the range in between).

However, as outlined in SEF 238, the Commission's understanding of the operations of Primy (and other sinks exporters) is that it primarily supplies sinks to entities who then on-sell the sinks to end users. This means that a similar amount of SG&A expenses would be used by Primy in selling a base model sink and its more expensive sinks, as it accepts the orders placed by its customers (which frequently include a range of sinks from base to high-end models), processes the orders, and facilitates the sale in the same manner regardless of the of sink ordered. It is therefore not reasonable or logical to adopt an approach of allocating SG&A expenses that unreasonably skews these expenses towards more expensive sinks.<sup>96</sup>

Consequently, the Commission continues to consider that an allocation of SG&A expenses based on revenue is not the most reasonable methodology for exporters of deep drawn stainless steel sinks, whereas a unit-based allocation is the most reasonable available allocation method.

Having determined this, the Commission has examined Primy's claims in relation to taps and whether the approach of allocating Primy's expenses wholly to sinks by units is reasonable, or whether certain expenses should be allocated to taps as well.

The data obtained by the Commission from Primy shows vast majority of Primy's sales of taps are made in combination with a sink, and only a small volume of taps were sold by Primy separate to sinks during the investigation period.<sup>97</sup> In the case of sinks sold with taps, the Commission understands (from its discussions with Primy during the exporter verification visit), that Primy considers the sale of the tap alongside a sink to be an 'upsell' of the sink, and those sales would generally not occur without the sale of the sink itself. In light of this fact, the Commission continues to consider that it is reasonable to adopt an allocation of SG&A expenses related to sales of those taps based on sinks volume, as the majority of tap sales only arise as a result of the sale of a sink.

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<sup>96</sup> The Commission notes that the standard approach it takes to allocating SG&A expenses is based on sales revenue, as outlined in Primy's *Verification Visit Report*, even though the Commission will routinely deal with goods that have multiple models of different selling prices. However, it is the wide range in selling prices between sinks models that makes this product unique in terms of allocating SG&A compared to other products investigated by the Commission, making a revenue-based allocation unreasonable.

<sup>97</sup> Observation based on data submitted by Primy and verified during the company's verification visit.

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However, the Commission considers that it is reasonable to allocate a portion of SG&A expenses to taps sold independently of sinks during the investigation period.

The Commission has limited data available to it to exactly identify taps sold independently of sinks to Australia and third countries, but it is in possession of a full data set to identify taps sold independently of sinks on the domestic market. As a significant proportion of Primy's sales are made domestically, the Commission considers it reasonable to rely on the proportions of individually sold taps to all sales on the domestic market in determining SG&A allocations.

Using this information, the Commission has:

- identified the volume of taps sold independently of sinks on the domestic market to original equipment manufacturers (OEM) as a proportion of total sales volume to OEM customers (as identified in Primy's exporter verification report, the SG&A expenses adopted by the Commission were only those related to OEM customers to ensure proper comparison of normal values and export prices);
- removed this proportion of SG&A expenses from the total SG&A expenses used; and
- allocated the remaining SG&A to sinks by units.

This approach does not impact the dumping margin for Primy.

### **II(iv) CALCULATION OF PROFIT – USING PRE-UPLIFT COST TO MAKE AND SELL**

Prior to SEF 238, when assessing claims made by Zhuhai Grand in relation to the reasonableness of that company's profit calculations, the Commission observed that the same issue of applying profit achieved on sales made in the ordinary course of trade that was assessed using cost to make and sell prior to including the uplift for costs reasonableness, was present in the calculations of profit in the company's *Verification Visit Report*.

As outlined in Section 6.11 it is considered that, in the case of deep drawn stainless steel sinks, the most reasonable method of calculating profit on sales made in the ordinary course of trade is to use the uplifted cost to make and sell when undertaking the ordinary course of trade calculations.

Consequently, amendments were made to Primy's profit calculations expenses allocation for the purposes of SEF 238, and these have been continued in this report.

## **PART III JIABAOLU**

### **III(i) BACKGROUND**

Prior to SEF238, Jiabaolu lodged a detailed submission regarding various aspects of the preliminary normal value calculations included in the company's *Verification Visit Report*.<sup>98</sup> This was taken in to account in determining the company's preliminary dumping margin in SEF238 (details of which are at Section 6.9.2 of that statement).

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<sup>98</sup> Jiabaolu, *Comments of Verification Visit Report*, 17 September 2014.



In response to SEF238, Jiabaolu re-submitted several points in relation to the calculation of the company's normal value for the purposes of SEF238.<sup>99</sup> This are again considered below.

### **III(ii) THE EXPORTER'S BUSINESS MODEL**

Jiabaolu has highlighted that it operates under an exclusive supply arrangement with its Australian customer, where price is set and only modified with movements in raw material prices. Jiabaolu submits that this should be taken in to account by the Commission when determining what methodologies it should use in determining various aspects of the company's dumping calculations.

The operation of Jiabaolu's exclusive supply Australian business model is noted. However, Commission notes that the fact that Jiabaolu operates with an exclusive supply arrangement with its Australian customer does not preclude these sales from being made 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, in line with the policy, practice and legal constraints that operate within the Australian anti-dumping system.

### **III(iii) DISCARDING OF MODEL COSTS**

#### **BACKGROUND AND SUBMISSIONS**

Jiabaolu noted that, in the *Verification 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 *Verification Visit Report*,<sup>100</sup> available on the Commission's Public Record.

In response to the approach taken in the *Verification 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*

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<sup>99</sup> Jiabaolu, *Comments on Statement of Essential Fact (No. 238) and the proposal of price undertaking*, 12 January 2014.

<sup>100</sup> Jiabaolu, *Comments of Verification Visit Report*, 17 September 2014.

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*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 SG&A costs).

Jiabaolu went on to submit that the Commissioner 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.

Jiabaolu also submits that the Commissioner 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.

These submissions have been reiterated by Jiabaolu in its submission in response to SEF238.<sup>101</sup>

### COMMISSION'S ASSESSMENT

The Commissioner 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 Commissioner considers unreasonable elements exist in an exporter's costs, the Commissioner is able to made 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 6.4 and 6.9 in the context of replacing costs not considered to be reasonably reflective of competitive market costs with a reasonable substitute. However, the Commissioner 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.

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<sup>101</sup> Jiabaolu, *Comments on Statement of Essential Fact (No. 238) and the proposal of price undertaking*, 12 January 2014.

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In this instance, the Commissioner has observed 'spikes' in Jiabaolu's recorded costs of manufacture, which Jiabaolu has attributed to accounting corrections (see above and the *Jiabaolu Verification Visit Report*). The Commissioner 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.

Importantly, the Commission notes that, if it were unable to arrive at a reasonable methodology for correcting these spikes in Jiabaolu's model costs, the Commission would be compelled to determine that Jiabaolu's cost to make and sell data is not an accurate reflection of the cost to manufacture those goods, and hence should not be relied upon for determining normal values for that company. In which case, the Commission would need to result to a determination of normal values based on other information available to it, instead of Jiabaolu's own data.

In terms of the methodology applied by the Commission to make this amendment, the Commissioner 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 *Verification Visit Report*.

In particular, the Commissioner 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.
- The use of investigation period (as opposed to quarterly) weighted average costs in cases where 'spikes' have occurred, as submitted by Jiabaolu. The Commissioner 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.
- 'Deleting' some models (i.e. the ones where spikes are noted) from the ordinary course of trade calculations when determining profit, as suggested by Jiabaolu in its submission of 12 January 2015. The Commission notes that this does not solve the issue of adopting model costs with spike when using manufacturing costs to calculate constructed normal values, and in the case of determining profit, it does not provide a full assessment of profitability on domestic sales made in the ordinary course of trade, but rather a 'selected' assessment only.

Consequently, the Commissioner has continued to accept the approach taken in the *Verification Visit Report* and SEF238 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.

### III(iv) 'BACKING OUT' OF ACCESSORIES

#### BACKGROUND AND SUBMISSIONS

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's 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 *Verification Visit Report* (including a re-allocation of accessories undertaken by the Verification Team to more accurately allocate accessories across markets).

In the company's *Verification Visit Report*, the Commissioner 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 *Verification Visit Report*).

Jiabaolu's submission in response to the *Verification Visit Report*<sup>102</sup> disputes the approach taken by the Commission. Jiabaolu submits that it considers that the Commission has adopted the approach in the *Verification 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).

Jiabaolu has again submitted its arguments in relation to this matter in response to SEF238.<sup>103</sup>

#### COMMISSION'S ASSESSMENT

The Commissioner 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.

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<sup>102</sup> Jiabaolu, *Comments of Verification Visit Report*, 17 September 2014.

<sup>103</sup> Jiabaolu, *Comments on Statement of Essential Fact (No. 238) and the proposal of price undertaking*, 12 January 2014.

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

### **III(v) 'OTHER ADJUSTMENTS'**

In its response to the *Verification Visit Report*, Jiabaolu submitted various other issues that it classified as 'other adjustments' to its normal value calculation.

These were considered and discussed in detail in SEF238 and have not been discussed by Jiabaolu in its submission in response to SEF238. The details of these issues are therefore not discussed in detail in this report, refer to Section 6.9.2 of SEF238 for discussion and the Commission's analysis of these issues.

## **PART IV ZHUHAI GRAND**

### **IV(i) 'UNREASONABLE METHODOLOGY'**

In its submission in response to its *Verification Visit Report*,<sup>104</sup> Zhuhai Grand objected 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.<sup>105</sup>

This issue was considered in detail in SEF238. Zhuhai Grand has not submitted argument in relation to this issue in response to SEF238. Refer to Section 6.9.3 of that statement for discussion and assessment of this issue.

### **IV(ii) VAT ADJUSTMENT**

In its submission in response to the *Verification Visit Report*,<sup>106</sup> Zhuhai Grand submitted that the Commission's methodology applied in the company's *Verification Visit Report* to calculate the upwards adjustment to normal values to account for differences in VAT between the domestic and export markets was mathematically erroneous. Specifically, Zhuhai Grand submitted that:

- the VAT adjustment should be calculated on the 'actual [Free on Board (FOB)] value', meaning the actual FOB export prices achieved by Zhuhai Grand in the investigation period, rather than the constructed FOB normal value with profit included (as this would have been the actual liability incurred by the company); and
- the formula applied by the Commission is incorrect.

In SEF 238, the Commission made no changes to the approach taken in the company's *Verification Visit Report* in relation to the above.

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<sup>104</sup> Zhuhai Grand, *Comments on dumping margin and subsidy margin calculation*, 3 November 2014

<sup>105</sup> As the same methodology applies for all exporters of the goods, this submission thereby extends to all exporters.

<sup>106</sup> Zhuhai Grand, *Comments on dumping margin and subsidy margin calculation*, 3 November 2014

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In its response to SEF 238,<sup>107</sup> Zhuhai Grand again submitted the above points.

In addition, Zhuhai Grand submitted that there should be no adjustment to normal values to account for differences in VAT between export prices and normal values in any case, as both the export price and the cost-based normal value (i.e. those calculated under s. 269TAC(2)(c)) are VAT-free.

The Commissioner does not agree with Zhuhai Grand's submission that an adjustment for differences in VAT liability between the export and domestic market is not warranted in general, simply because the constructed normal value and export prices being used for dumping margin comparison are VAT free.

The purpose of the adjustment is that, when making the export sale, the company is aware of the fact that it is unable to recover the full amount of VAT paid on its inputs, and that this should have an associated effect on export price whereby the export price would be raised to accommodate this extra cost. Consequently, it is logical to upwards adjust the normal value for this 8% difference in taxation, as provided for by s. 269TAC(9) of the Act.

Further, the Commissioner does not agree with Zhuhai Grand's submission that the VAT adjustment should be calculated on actual (achieved) FOB export prices. 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 calculation of the VAT adjustment, the Commission has re-visited the calculation and has determined that the method adopted in Zhuhai Grand's *Verification Visit Report* should be amended to calculate the VAT adjustment simply as follows:

*FOB normal value X 8% (the amount of VAT that is non-refundable)*

This amendment has been made and has the effect of reducing the company's dumping margin.

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<sup>107</sup> Zhuhai Grand, submission dated 12 January 2015.

## NON-CONFIDENTIAL APPENDIX 7 – ASSESSMENT OF LEGALITY OF INVESTIGATING ‘NEW’ SUBSIDY PROGRAMS

### PART I INTRODUCTION

As outlined at Section 7.3.2 of this report, following its investigations with selected exporters, the Commission identified 16 potential subsidy programs that were available to those exporters during the investigation period (program 9 to 24).

After discovering the existence of these programs, the Commission commenced investigations into each, and sent the GOC the SGQ seeking information and documentation regarding the 16 new potential programs.

The GOC has questioned the legality of the Commission commencing investigations into programs 9 to 24, which were identified with selected cooperating exporters during the investigation (and not subject to the application itself). This matter is considered below.

### PART II GOC SUBMISSIONS

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;

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*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.
- 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 s. 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 s. 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.

s. 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 s. 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."*

### **PART III COMMISSION'S ASSESSMENT**

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



### **III(i) 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 Commissioner 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.

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 Commissioner does not find any inconsistency between s. 269TC(10) or the *SCM Agreement* on these grounds.

### **III(ii) 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 Commissioner 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 Commissioner does not agree with the GOC that is self-initiating investigations into new subsidy programs, the Commissioner 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. s. 269TC(10) allows for the Commissioner 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 s. 269TC(10) that the Commissioner 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.

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s. 269TC(10) does not expressly outline the standard of proof that applies to initiating investigations into additional programs. However the Commissioner 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 s. 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:

- 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 Commissioner 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.

### **III(iii) CONCLUSION**

The Commissioner does not consider that the Commission's 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. s. 269TC(10) of the Act and allow for the Commissioner to investigate alleged subsidy programs in the manner undertaken by the Commission.

**NON-CONFIDENTIAL APPENDIX 8 – 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 Commissioner identified during the course of the investigation.

The 24 investigated programs, and the Commission’s assessment of the countervailability of each in relation to deep drawn stainless steel sinks from China, is outlined in the below table.

<b>Program Number</b>	<b>Program Name</b>	<b>Program Type</b>	<b>Countervailable In relation to the goods (Yes/No)</b>
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

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Program Number	Program Name	Program Type	Countervailable In relation to the goods (Yes/No)
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

**I(ii) APPLICABLE LEGISLATION**

s. 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

(viii) the purchase by that government or body of goods or services; or

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*(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 Section (3), access to the subsidy is explicitly limited to particular enterprises; or*

*(b) if, subject to Section (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 Section (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.*

s. 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 s. 269TJ of the Act, one of the matters that the Parliamentary Secretary 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 Commissioner 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 Commissioner 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 SEF 238.

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 Commissioner also considered as part of this assessment:

- Information submitted by interested parties in various general submissions to the investigation;
- 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**

##### Application

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 304 SS CRC (hereafter referred to as '304 SS CRC') 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/or 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 supply 304 SS CRC are public bodies, and that a financial contribution in the form of supply of raw material inputs at less than adequate remuneration by these SIEs to deep drawn stainless steel sink producers constitutes a countervailable subsidy.

##### SEF 238 findings

In its SEF 238, the Commission preliminarily found that this program existed, and that Chinese exporters of the goods had received benefits under this program.



Elements of the subsidy

Under this program, a benefit to exported deep drawn stainless steel sinks is conferred by 304 SS CRC being provided by the GOC (through SIEs, that are determined to be public bodies) at an amount reflecting less than adequate remuneration, having regard to prevailing market conditions in China.

The Commission's assessment of whether SIEs supplying 304 SS CRC constitute a public body in the meaning of s. 269T(a)(ii) is discussed below.

The Commission's assessment of what constitutes 'adequate remuneration' for 304 SS CRC in China is outlined in PART VI of this appendix.

Data collected from exporters

The Commission requested information from Chinese exporters in relation to their purchases of 304 SS CRC during the investigation period. For each supplier of 304 SS CRC, 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 and traders of all purchased 304 SS CRC, 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 304 SS CRC at less than adequate remuneration.

**IS THERE A SUBSIDY?**

Financial contribution

Based on the information above, the Commissioner considers that this program involves a financial contribution that involves the provision of goods, at less than adequate remuneration.

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### 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 to carry out 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 304 S CRC;
- 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
  - 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 Dispute Resolution Panel and 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 HSS exported from China;

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- REP 203 – the Commission’s reinvestigation of certain findings in REP 177, one of which was whether SIEs that supplied 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 HRC to manufacturers of coated steel were public bodies;
- Anti-Dumping Review Panel (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 Appellate Body 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 Commissioner 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 Commissioner 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 Commissioner does not advocate such an approach in the present investigation.

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):<sup>108</sup>

- **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

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<sup>108</sup> Appellate Body report DS379 at [318]

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- **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 steel 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 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;
- 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

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- 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 Commissioner 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 Commissioner 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".'

In DS436 the US argued that in addition to the Government of India's (GOI's) majority shareholding in the relevant entity (the National Mineral Development Corporation (NMDC))<sup>109</sup>, 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';

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<sup>109</sup> The GOI held 98% of the shares of the NMDC

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- ‘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;
- 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 supply 304 SS CRC:

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- a list of all manufacturers of 304 SS CRC 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 Commissioner observes that the GOC submitted during investigation 177<sup>110</sup> 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.*

*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 Commissioner 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.'

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<sup>110</sup> HSS exported from China

*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 Commissioner 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 Commissioner 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 304 SS CRC 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 Commissioner 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 304 SS CRC under the program at less than adequate remuneration, 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.

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



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- “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).

This discussion focusses on factual circumstances where an exporter of investigated goods purchases an input directly from a private enterprise, but that private enterprise or an entity higher up in the supply chain acquired that input from a government, public body or private body entrusted to carry out governmental functions. In these cases, in order for a subsidy to have been received in respect of the goods, it must be demonstrated that the benefit that is conferred by the government/public body/entrusted private body higher in the supply chain has ‘passed through’ to confer benefit on the goods themselves that are ultimately produced by the exporter.

The Commissioner observes that it does not consider that ‘pass through’ analysis is relevant in this case, as the purchase of the 304 SS CRC that the Commissioner considers confers a benefit on the goods are direct purchases of those inputs by manufacturers of the goods from SIEs that supply the 304 SS CRC. This would necessarily confer direct benefit on the goods which are then manufactured from the 304 SS CRC.

### **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 304 SS CRC 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 Commissioner 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).

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 304 SS CRC 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

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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 Commissioner considers that these entities have not given the Commissioner information considered to be relevant to the investigation within a reasonable period.

Pursuant to s. 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 304 SS CRC; and
- one selected exporter purchased a significant amount of 304 SS CRC from SIEs during the investigation period;

it is considered likely that uncooperative and all other exporters purchased 304 SS CRC from SIEs and therefore received a financial contribution under this program.

In the absence of information that demonstrates the volume of 304 SS CRC purchased from SIEs by selected uncooperative and all other exporters, in accordance with s. 269TACD(1), the Commissioner 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**

### SIE prices higher than private prices

In a submission dated 3 November 2014, Zhuhai Grand submitted that the Commission has 'failed to demonstrate that the purchase of SS CRC from the parent company [an SIE] constitute[s] a subsidy'.

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Zhuhai Grand notes that the Commission has found that only purchases of 304 SS CRC 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 adequacy of remuneration used to determine whether a benefit has been conferred by the purchase of 304 SS CRC from SIEs has been established not by reference to prices of 304 SS CRC charged by non-SIE entities in China, but rather by reference to an external benchmark price after finding that all 304 SS CRC prices in China, including private prices, are not suitable for determining adequate remuneration. The details of this assessment and the benchmark are disused in Part VI of this appendix.

The Commissioner has compared this adequate remuneration benchmark to the prices paid by Zhuhai Grand to the SIE in purchasing 304 SS CRC and has determined that these purchases did confer a benefit, being lower than the established adequate remuneration benchmark.

The Commissioner 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).

### No subsidy as Guangdong Metals did not produce the materials

In its submission dated 12 January 2015, Zhuhai Grand has submitted that it has not benefitted under any subsidy program, as its purchases of 304 SS CRC that the Commissioner considers to be countervailable subsidies were supplied by Guangdong Metals, which is a trader of the 304 SS CRC and not a manufacturer.

In making this submission, Zhuhai Grand draws the Commission's attention to the supply chain of the 304 SS CRC purchased by the company from Guangdong Metals, and submits that the 304 SS CRC is ultimately manufactured in China by Zhangjiagang Pohang Stainless Steel Co., Ltd, which is a subsidiary of POSCO, a Korean-based steel company. Zhuhai Grand goes on to submit that the Commission has only determined that these purchases of 304 SS CRC are countervailable subsidies by virtue of the fact that the company purchased the 304 SS CRC directly from Guangdong metals instead of the non-SIE manufacture.

Zhuhai Grand concludes that the company cannot be said to have benefitted from subsidy Program 1, as the manufacturer of the acquired goods is neither an SIE nor a public body.

The Commissioner notes Zhuhai's Submission, but observes that the purchases of 304 SS CRC from Guangdong Metals by Zhuhai Grand does in fact meet the conditions of a countervailable subsidy, being:

- a financial contribution – provision of the materials at less than adequate remuneration by reference to the adequate remuneration benchmark for those goods;
- made by a public body – Guangdong Metals;
- that conferred a benefit in respect of the goods.

The details of this assessment are discussed above.

The Commissioner notes that there is no known legal, policy or practice constraint that requires that, where a subsidy results from the provision of goods or services for less than adequate remuneration, the goods themselves must be manufactured by a public body (or government or private body entrusted with government functions). The Commissioner considers that, where goods have been supplied by a public body and that supply is a financial contribution that confers a benefit on the goods, then the fact that the products supplied were not manufactured by a public body in and of itself is not a relevant consideration.

Further, there is no requirement that purchases of goods from a public body at less than adequate remuneration must be somehow lower or otherwise different to prices from non-public bodies for the transaction to be considered a subsidy. In the case of 304 SS CRC in China, the Commissioner has determined that all domestic selling prices of that input (regardless of their ultimate source or supply chain) are not representative of reasonably competitive market costs for that material (see Appendix of this report). The Commissioner therefore considers that all purchases of 304 SS CRC in China to be at 'less than adequate remuneration' where they were made below the adequate remuneration benchmark. However, it is only in the case of where these goods are supplied by a public body<sup>111</sup> (or if supplied by a private body but a public body is involved higher in the supply chain and benefit conferred by this body as 'passed thorough') that the transaction can be considered to be a subsidy.

An illustrative example is a situation where a public body (such as a reserve bank) provides a preferential loan rate that is 1% below private suppliers and then one private supplier reduces its loans to match the government's rate. In these cases, this does not mean that the government's loan rate is no longer a countervailable subsidy.

There is also no requirement that, if goods that have been supplied by a public body were instead provided through another supply chain that did not include a public body this means that the supply via a public body cannot be determined to be a subsidy.

The Commissioner therefore continues to consider Program 1 to be a countervailable subsidy in respect of the goods.

#### Guangdong Metals is not a public body

In its submission in response to SEF 238<sup>112</sup>, Zhuhai Grand has refuted the finding that Guangdong Metals is a public body, and hence supply of 304 SS CRC by this entity is not, by definition, a subsidy.

The Commissioner has examined the nature of Guangdong Metals extensively above, and considers that sufficient evidence exists to determine that the entity is a public body.

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<sup>111</sup> Or the GOC or an entrusted private body

<sup>112</sup> Zhuhai Grand, submission dated 12 January 2015.

## 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
<b>Program 7 - Reduced tax rate for productive FIEs scheduled to operate for a period not less than 10 years</b>	<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 Commissioner 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 <a href="http://www.adcommission.gov.au/reference-material/subsidies-register.asp">http://www.adcommission.gov.au/reference-material/subsidies-register.asp</a>).</p>	<p>the end of 2012 they will be subject to the normal tax rate of 25%.</p>				
<p><b>Program 8 - Tax preference available to companies that operate at a small profit</b></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"> <li>• Enterprise Income Tax Law of the People's Republic of China 2008; and</li> <li>• Regulations of the People's Republic of China on the Implementation of the Enterprise Income Tax Law 2008.</li> </ul> <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"> <li>• 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</li> <li>• other enterprises, whose annual taxable income does not exceed RMB 300,000, the</li> </ul>	<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 Section 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 Commissioner 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"> <li>• the existence of positive evidence of receipt of this program by an exporter of deep drawn stainless steel sinks to Canada;</li> <li>• the number of exporters of deep drawn stainless steel sinks to Australia; and</li> <li>• the considerable overlap between Australian and Canadian exporters observed both with selected exports and within ACBPS import data</li> </ul> <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>
<p><b>Program 24 - Preferential Tax Policies for High and New Technology Enterprises*</b></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</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,</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,</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,</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</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</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>previously determined that this program is a countervailable subsidy, as referenced in the Commission's subsidy register (accessible at <a href="http://www.adcommission.gov.au/reference-material/subsidies-register.asp">http://www.adcommission.gov.au/reference-material/subsidies-register.asp</a>).</p> <p>WTO Notification</p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>administered by the GOC's State Administration of Taxation.</p>	<p>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>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>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>apportioned to each unit of the goods using that exporter's total sales volume<sup>113</sup>.</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<sup>114</sup>.</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 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</p>

<sup>113</sup> In accordance with s. 269TACD(1), the amount of that benefit is taken to be equal to the sum granted.

<sup>114</sup> This approach differs to that taken in the relevant *Verification 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.



**PUBLIC RECORD**

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
						<p>this program, all relevant information has been considered<sup>115</sup> 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 amount 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"> <li>• 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);</li> <li>• attributed the highest per unit subsidy amount for this program of the selected exporters to all uncooperative and all other exporters; and</li> <li>• calculated the subsidisation percentage for this program as the above unit amount over the lowest weighted average export price of the selected exporters.</li> </ul>

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<sup>115</sup> Pursuant to s. 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.

## 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
<b>Program 2 - Research &amp; Development (R&amp;D) Assistance Grant</b>	<p>Tasman’s application alleged that:</p> <p><i>During the Investigation Period, those exporters based in Foshan City were awarded the R&amp;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</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</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"> <li>• research projects addressing scientific and technological problems;</li> <li>• technology innovation projects; or</li> <li>• projects aimed at</li> </ul>	<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 (s. 269TACC(2)).</p> <p>Where exporters of the goods during the investigation period</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 s. 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</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>referenced in the Commission's subsidy register (accessible at <a href="http://www.adcommission.gov.au/reference-material/subsidies-register.asp">http://www.adcommission.gov.au/reference-material/subsidies-register.asp</a>).</p> <p><u>WTO Notification</u></p> <p>The application advised that:</p> <p><i>The on-going 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>program</p> <p>The Commissioner considers this to be evidence of the fact that this program is administered in several regions by different GOC bodies.</p>	<p>innovation in science and technology in the agricultural sector</p> <p>as well as some high and new technology industries.</p>	<p>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"> <li>• the existence of positive evidence of receipt of this program by an exporter of deep drawn stainless steel sinks to Canada;</li> <li>• the number of exporters of deep drawn stainless steel sinks to Australia; and</li> <li>• the considerable overlap between Australian and Canadian exporters observed both with selected exports and within ACBPS import data</li> </ul> <p>it is reasonable to determine that exporters of the goods to Australia would have been in receipt of this subsidy program.</p>		<p>information has been considered<sup>116</sup> 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.</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 s. 269TACD(1), the Commissioner considers that the maximum subsidy amount should be calculated by working out:</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• determining the applicable per unit subsidisation amount by reference to the lowest total sales volume of the three selected exporters; and</li> <li>• determining a subsidisation rate</li> </ul>

<sup>116</sup> Pursuant to s. 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 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).

**PUBLIC RECORD**

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
						(margin) by reference to the lowest weighted average export price seen amongst the selected exporters.
<p><b>Program 3 - Grants for Export Activities</b></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</i></p>	<p>In its response to the <i>Government Questionnaire</i>, 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 (s. 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</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 s. 269TAAC(3).</p> <p>Further, being an export-oriented subsidy, only enterprises that export goods from China are eligible.</p> <p>The Commissioner 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.<sup>117</sup></p>

<sup>117</sup> Pursuant to s. 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.

**PUBLIC RECORD**

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
	<p><i>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 WTO notification of this program.</p>			<p>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"> <li>• the existence of positive evidence of receipt of this program by an exporter of deep drawn stainless steel sinks to Canada;</li> <li>• the number of exporters of deep drawn stainless steel sinks to Australia; and</li> <li>• the considerable overlap between Australian and Canadian exporters observed both with selected exports and within ACBPS import data</li> </ul> <p>it is reasonable to determine that exporters of the goods to Australia would have been in receipt of this subsidy program.</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 s. 269TACD(1), the Commissioner considers that the maximum subsidy amount should be calculated by working out:</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• determining the per unit subsidisation amount by reference to the lowest total <u>export</u> sales volume<sup>118</sup> of the three selected exporters; and</li> <li>• determining a subsidisation rate (margin) by reference to the lowest weighted average export price seen amongst the selected exporters.</li> </ul> <p>The Commissioner 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>

<sup>118</sup> 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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Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
<p><b>Program 4 - Allowance to pay loan interest</b></p>	<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 loans....</i></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>In its response to the <i>Government Questionnaire</i>, 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 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</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>This suggests that 'small and medium sized businesses' are eligible for 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, 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 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 (s. 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"> <li>the existence of positive evidence of receipt of this program by an exporter of deep drawn stainless steel</li> </ul>	<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 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>The amount of subsidisation under this program has been calculated in the same manner as Program 2 (see above).</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><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>authorities exist in China to administer the program nationally.</p>		<p>sinks to Canada;</p> <ul style="list-style-type: none"> <li>• the number of exporters of deep drawn stainless steel sinks to Australia; and</li> <li>• the considerable overlap between Australian and Canadian exporters observed both with selected exports and within ACBPS import data</li> </ul> <p>it is reasonable to determine that exporters of the goods to Australia would have been in receipt of this subsidy program.</p>		
<p><b>Program 5 - International Market Fund for Export Companies</b></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</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 (s. 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</p>	<p>Being an export-oriented subsidy, only enterprises that export goods from China are eligible.</p> <p>The Commissioner 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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Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
	<p>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>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"> <li>• the existence of positive evidence of receipt of this program by an exporter of deep drawn stainless steel sinks to Canada;</li> <li>• the number of exporters of deep drawn stainless steel sinks to Australia; and</li> <li>• the considerable overlap between Australian and Canadian exporters observed both with selected exports and within ACBPS import data</li> </ul> <p>it is reasonable to determine that exporters of the goods to Australia would have been in receipt of this subsidy program.</p>		
<p><b>Program 6 - International Market Fund for Small and Medium-sized Export Companies</b></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>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</p>	<p>The eligibility criteria for this program is Limited to SME enterprises that have:</p> <ul style="list-style-type: none"> <li>• a legal personality according to law;</li> <li>• the capacity to manage an import or export</li> </ul>	<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</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</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 Commissioner considers that some of the grants received under this program by the selected exporter are related to export activity to</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 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 <a href="http://www.adcommission.gov.au/reference-material/subsidies-register.asp">http://www.adcommission.gov.au/reference-material/subsidies-register.asp</a>). 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</i></p>	<p>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>business;</p> <ul style="list-style-type: none"> <li>• made exports in the previous year of 15,000,000 (before 2010) or 45,000,000 (after 2010) US dollars or less;</li> <li>• sound financial management systems and records;</li> <li>• employees who specialise in foreign trade and economic business who possess the basic skills of foreign trade and economics; and</li> <li>• a solid market development plan.</li> </ul>	<p>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 meet the definition of a subsidy under s. 269T.</p> <p>The Commissioner 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>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 s. 269TAAC(3).</p>	<p>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> <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><sup>119</sup> sales volume.<sup>120</sup></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>

<sup>119</sup> It is noted that this approach differs to that taken in the relevant *Verification 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.

<sup>120</sup> In accordance with s. 269TACD(1), the amount of that benefit is taken to be equal to the sum granted.

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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><i>Countervailing Measures of China dated 21 October 2011”.</i></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> <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</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>investigation period in the form of direct transfers of funds.<sup>121</sup></p> <p>In calculating the amount of subsidy, the Commission:</p> <ul style="list-style-type: none"> <li>• attributed the actual applicable subsidy amount received under this program by the selected exporter;</li> <li>• determined the per unit subsidisation amount by reference to the lowest total <u>export</u> sales volume of the three selected exporters; and</li> <li>• determined a subsidisation rate (margin) by reference to the lowest weighted average export price amongst the selected exporters.</li> </ul> <p>The Commissioner 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>
<p><b>Program 9 - Award to top ten tax payer*</b></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. Information gathered from the selected exporter has</p>	<p>The recipient selected exporter submitted that companies that are</p>	<p>A grant provided under this program would be a financial contribution by the GOC, which involves a direct transfer of funds</p>	<p>Only enterprises that are top ten taxpayers within Shenwan Town of Zhongshan City are</p>	<p><u>Selected exporters</u></p> <p>A subsidy rate will be applied to the selected exporter found</p>

<sup>121</sup> Pursuant to s. 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.

**PUBLIC RECORD**

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 initiated investigations into this program following receipt of this information, requesting information from the GOC in relation to this program in the Supplementary <i>Government Questionnaire</i>.</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>shown that the program is administered by the local government of Shenwan Town of Zhongshan City.</p>	<p>amongst the top ten tax payers are eligible for this grant.</p>	<p>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 (s. 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 Commissioner 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>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 s. 269TAAC(3).</p>	<p>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.<sup>122</sup></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> <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</p>

<sup>122</sup> In accordance with s. 269TACD(1), the amount of that benefit is taken to be equal to the sum granted.

**PUBLIC RECORD**

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
						<p>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 information<sup>123</sup> 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,<sup>124</sup> the Commission:</p> <ul style="list-style-type: none"> <li>• worked out the full amount of the grant received by the selected exporter to the investigation that received this program;</li> <li>• determined the per unit subsidisation amount by reference to the lowest total sales volume of the</li> </ul>

<sup>123</sup> Pursuant to s. 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.

<sup>124</sup> Pursuant to s. 269TACD(1).

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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>three selected exporters; and</p> <ul style="list-style-type: none"> <li>determined a subsidisation rate (margin) by reference to the lowest weighted average export price seen amongst the selected exporters.</li> </ul>
<p><b>Program 10 – Assistance to take part in overseas trade fairs*</b></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 &amp; 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 <i>Government Questionnaire</i>.</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 (s. 269TACC(2)).</p> <p>Where exporters of deep drawn stainless steel sinks during the investigation period received a grant the Commissioner considers it, 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 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 s. 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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Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
				<p>The Commissioner 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><b>Program 11 - Grant for management certification*</b></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 (s. 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</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 s. 269TAAC(3).</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 2 (see above).</p>

**PUBLIC RECORD**

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
				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><b>Program 12 - Grant for certification of product patents*</b></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 <i>Government Questionnaire</i>.</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 (s. 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 s. 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 Commissioner therefore does not consider that a subsidy rate under this 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 <i>Verification Visit Report</i>, following further consideration</p>



**PUBLIC RECORD**

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
						<p>by the Commission.</p> <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 Commissioner has considered all relevant information<sup>125</sup> 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>

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<sup>125</sup> Pursuant to s. 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)*.

**PUBLIC RECORD**

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
						<p>In calculating the amount of subsidy attributable to that benefit<sup>126</sup>, the Commission:</p> <ul style="list-style-type: none"> <li>• worked out the full amount of the grant received by the selected exporter to the investigation that received this program;</li> <li>• determined the per unit subsidisation amount by reference to the lowest total sales volume of the three selected exporters; and</li> <li>• determined a subsidisation rate (margin) by reference to the lowest weighted average export price seen amongst the selected exporters.</li> </ul>
<p><b>Program 13 – Grant for inventions, utility models and designs*</b></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</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</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</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 2 (see above).</p>

<sup>126</sup> Pursuant to s. 269TACD(1).

**PUBLIC RECORD**

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
	<p>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>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 (s. 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 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>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><b>Program 14 - Grant for international marketing*</b></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</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</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 amount of subsidisation under this program has been calculated in the same manner as Program 3 (see above).</p>

**PUBLIC RECORD**

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
	<p>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>(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 (s. 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 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>The specificity of the subsidy is not excepted by reference to s. 269TAAC(3).</p>	
<p><b>Program 15 - Subsidy to electronic commerce*</b></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 <i>Supplementary Government Questionnaire</i>.</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</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,</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</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 9 (see above).</p>

**PUBLIC RECORD**

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
	<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>published by the administrating authority.</p>	<p>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 (s. 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 Commissioner 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>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><b>Program 16 - Grant for overseas advertising and trademark registration*</b></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</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</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</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 3 (see above).</p>

**PUBLIC RECORD**

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
	<p>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>(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 (s. 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 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>be specific.</p> <p>The specificity of the subsidy is not excepted by reference to s. 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><b>Program 17 - Grant for overseas marketing or study*</b></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>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,</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</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 2 (see above).</p>

**PUBLIC RECORD**

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
	<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>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 (s. 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 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 is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to s. 269TAAC(3).</p>	
<p><b>Program 18 - Gaolan Port Subsidy*</b></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 <i>Supplementary Government</i></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</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</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</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 6 (see above).</p>

**PUBLIC RECORD**

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
	<p><i>Questionnaire.</i></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>reimbursed by the administrating authority (International Container Port (Gaolan) Co. Ltd.) after each quarter of shipments.</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 (s. 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 Commissioner 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>be specific.</p> <p>The specificity of the subsidy is not excepted by reference to s. 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><b>Program 19 - Information development subsidy*</b></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 <i>Government Questionnaire</i>.</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,</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</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 9 (see above).</p>



**PUBLIC RECORD**

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
	<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>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 (s. 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 Commissioner 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>be specific.</p> <p>The specificity of the subsidy is not excepted by reference to s. 269TAAC(3).</p>	
<p><b>Program 20 - Foreign Trade Exhibition Activity Fund*</b></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 <i>Supplementary Government Questionnaire</i>.</p> <p>To its knowledge, the Commission has not investigated this program in</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>The recipient exporter submitted that companies attend exhibitions and then apply to the relevant administering authority for the reimbursement of their expenses.</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 <u>export</u> goods of the recipient enterprise</p>	<p>Only enterprises that attend international trade exhibitions 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</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 6 (see above).</p>

**PUBLIC RECORD**

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><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>			<p>(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 (s. 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 Commissioner 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>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><b>Program 21 - Zhuhai Technology Reform &amp; Renovation Fund*</b></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 <i>Government Questionnaire</i>.</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 submitted that companies are required to undertake a technological innovation project to be eligible for the grant. Other specific eligibility criteria relate to issues</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,</p>	<p>Only enterprises that undertake technological innovation projects 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 amount of subsidisation under this program has been calculated in the same manner as Program 9 (see above).</p>

**PUBLIC RECORD**

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 inadvertently duplicated this program in the Supplementary <i>Government Questionnaire</i> 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>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>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 (s. 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 Commissioner 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>The specificity of the subsidy is not excepted by reference to s. 269TAAC(3).</p>	
<p><b>Program 22 - Zhuhai Support the Strong Enterprise Interests Subsidy*</b></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 <i>Government Questionnaire</i>.</p> <p>This program was inadvertently excluded from the Supplementary</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 company being classified as a specific type of company in China.</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</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 subsidy is not excepted by reference to s. 269TAAC(3).</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 9 (see above).</p>

**PUBLIC RECORD**

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
	<p><i>Government Questionnaire</i> sent to the GOC (and the associated file note released on the Commission's electronic public record). However, the program was notified in SEF 238 and the GOC encouraged to make submissions in relation to this program in response to SEF 238. No such submission was made.</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 exporter submitted that companies must submit an application form and bank loan contracts and interest payment to the authority.</p>	<p>(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 (s. 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 Commissioner 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>For these the subsidy is specific</p>	
<p><b>Program 23 - Zhuhai Research &amp; Development Assistance Fund*</b></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 <i>Government Questionnaire</i>.</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 reporting research</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>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 subsidy is not excepted by</p>	<p>The amount of subsidisation under this program has been calculated in the same manner as Program 9 (see above).</p>

**REP 238 Deep Drawn Stainless Steel Sinks - China**

**PUBLIC RECORD**

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
	<p><u>WTO Notification</u></p> <p>The Commission is not aware of any WTO notification of this program.</p>		<p>and development expenses to the administering body and the body calculates the amount payable and make an associated payment.</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 (s. 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 Commissioner 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>reference to s. 269TAAC(3).</p>	

## PART VI ADEQUATE REMUNERATION FOR STAINLESS STEEL COIL

After determining that SIEs that produced and/or supplied stainless steel in China are 'public bodies' for the purposes of the Act, the Commissioner 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 Commissioner has sought to establish an appropriate benchmark for 304 SS CRC in China, having regard to the guidelines set out in s. 269TACC(4) of the Act, and Article 14(d) of the *SCM Agreement*.

### VI(i) TASMAN'S APPLICATION

After submitting that purchases of 304 SS CRC by Chinese exporters from domestic SIEs was not for adequate remuneration, Tasman submitted that:

*[Tasman] suggest that the monthly world composite 304 stainless steel prices reported by MEPS (International) LTD, are most appropriate for purposes of establishing the fair market value of cold-rolled stainless steel sheet in China. This composite price is a weighted average of the low transaction values for all grade 304 stainless steel products in the flat & long categories identified in three regions (European Union, Asia, and North America).*

### VI(ii) THE ACT AND SCM AGREEMENT

s. 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(iii) APPROACH TO BENCHMARK – EXCLUSION OF INTERNAL OPTIONS

In line with the guidelines present in the Act and *SCM Agreement*, the Commissioner has examined internal benchmarks in China as the possible first option for determining adequate remuneration for 304 SS CRC in China.

The Commissioner considers that the two available internal benchmarks in China that could possibly be used are private prices from non-SIE 304 SS CRC suppliers, and import prices of 304 SS CRC to China.

### PRIVATE PRICES

In establishing a benchmark price for 304 SS CRC reflecting adequate remuneration, the Commissioner 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**.

It is considered that these GOC influences on the Chinese 304 SS CRC market have had a distorting effect on the market overall, and hence have distorted prices throughout the entire market, whether they be from SIEs or private enterprises. For this reason, the Commissioner considers that all prices of 304 SS CRC in China (regardless of whether the material was manufactured by an SIE or not) to not be suitable in determining adequate remuneration for 304 SS CRC in China, as both private and SIE prices are distorted.

The distortions observed in the Chinese 304 SS CRC market as a result of GOC influence makes private domestic prices unsuitable for determining adequate remuneration, hence providing for the use of external benchmarks.

### IMPORT PRICES

The Commissioner has considered whether it would be suitable to use imported 304 SS CRC prices into China as an appropriate in-country benchmark.

In the absence of a complete response to the *Government Questionnaire* for this investigation, the Commissioner does not possess statistics relevant to assessing import penetration of stainless steel in the Chinese domestic market (noting that the Komodo Group has submitted unverified importation figures that the Commission has been unable to assess the veracity of). However, assessment of the data of Chinese exporters shows 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 Commissioner 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 Commissioner considers that import prices are not suitable for determining a competitive market cost of stainless steel.

### CONCLUSION

In light of the above, the Commissioner determines that the use of internal benchmarks in China (private prices or import prices) is not suitable for determining adequate remuneration for 304-grade stainless steel in China.

### VI(iv) APPROPRIATE BENCHMARK – EXTERNAL BENCHMARKS

Having determined that internal benchmarks in China are not appropriate for determining a benchmark to represent adequate remuneration for 304 SS CRC in China, the Commissioner has determined that an external benchmark (established using non-Chinese-based data) should be used.

#### 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 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*



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*country and which reflects price, quality, availability, marketability, transportation and other conditions of purchase or sale as required by Article 14(d).*<sup>127</sup>

[Emphasis added]

The GOC referred to the Appellate Body's findings in DS257 in its response to the *Government Questionnaire*.

### OPTIONS CONSIDERED

During the investigation, the Commissioner has considered several external benchmarks have been submitted to the investigation as viable options, namely:

- 1) a MEPS-based monthly world composite 304 stainless steel price, determined as a weighted average of the low transaction values products in the flat and long categories identified in three regions (European Union, Asia, and North America);
- 2) a MEPS-based world average price (of European, North American and Asian average MEPS 304 SS CRC prices);
- 3) the MEPS Asian 304 SS CRC price (an average of Chinese, Taiwanese, Korean and Japanese prices reported by MEPS);
- 4) a MEPS-based Asian 304 SS CRC price calculated excluding Chinese prices (i.e. Taiwanese, Korean and Japanese MEPS prices);
- 5) Australian import prices of Thai 304 SS CRC;
- 6) Tasman's own 304 SS CRC purchase prices; and
- 7) a MEPS-based European and North American average 304 SS CRC price.

### APPROACH IN SEF 238

The Commission found that, for the purposes of SEF 238, the benchmark for determining adequate remuneration should be:

*a composite of monthly North American and European 304 grade stainless steel coil prices for the investigation period, as published by MEPS.*

This benchmark specifically excluded MEPS Asian 304 SS CRC prices (a further price available from MEPS) as the reported MEPS Asian price included Chinese domestic prices in its average, and the Commission considered the inclusion of these Chinese prices would contaminate the benchmark, after finding that the Chinese domestic price for 304 SS CRC is not a reasonably competitive market price.

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<sup>127</sup> At paragraph 103.

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This benchmark approach was also adopted by the Commission prior to SEF 238 in PAD 238.

For clarity, the use of the term 'composite' with reference to the benchmark in SEF 238 (and earlier in PAD 238) was intended to mean 'average' of North American and European 304 SS CRC. In determining its SEF 238 and PAD 238 benchmark, the Commission did not adopt prices published and referred to by MEPS as its 'all products composite stainless steel – grade 304' prices, as the Commissioner understood that these MEPS prices included not only 304 SS CRC, but other 304 grade stainless steel materials that are not used in the manufacture of deep drawn stainless steel sinks.<sup>128</sup>

### INTERESTED PARTY SUBMISSIONS

Prior to the finalisation of SEF 238, the Commission 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.

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 304 SS CRC in China.<sup>129</sup>
- The use of a MEPS European and North American-based benchmark is not appropriate as it in no way relates or is connected to the prevailing market conditions in China.<sup>130</sup>
- The TMRO has previously advised that it needs to be established whether the adequacy of remuneration provided is adequate to compensate the supplier for the products sold.<sup>131</sup>
- 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.<sup>132</sup>
- Any benchmark used by the Commission should have regard to the economic development of China.<sup>133</sup>
- A MEPS world price (as submitted by Tasman in its application as an appropriate substitute price) is not appropriate as:

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<sup>128</sup> Confusion of the use of the term 'composite' in SF238 has resulted, as per GWA's submission of 18 December 2014 (discussed in detail below).

<sup>129</sup> GOC, *Response to the Government Questionnaire*.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

<sup>132</sup> The Komodo Group, *Submission on Particular Market Situation in China*, 22 July 2014.

<sup>133</sup> Ibid.

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- 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.<sup>134</sup>
- Actual stainless steel prices incurred in China by exporters when purchasing from non-state owned enterprises should be used as a first resort.<sup>135</sup>
- If not the above, then surrogate prices from a country that has similar macro-economic indicators and market conditions to China should be used.<sup>136</sup>
- 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.<sup>137</sup>
- If a MEPS price is used, there is no justification for not including Asian MEPS prices in any average price (noting that Asian prices were excluded from the MEPS-based average price 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.<sup>138</sup>
- Before it can conclude that Chinese domestic 304 SS CRC 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 inches), which is different from Asian products, affects comparability;
  - Whether Tasman mainly use 304 SS CRC from Japan or other Asian suppliers.<sup>139</sup>

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<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

<sup>137</sup> Tasman, *Submission in response to Abey Submission*, 10 June 2014.

<sup>138</sup> Jiabaolu, *Comments on Exporter Visit Report*, 17 September 2014.

<sup>139</sup> Ibid.

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- 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 Asia.<sup>140</sup>

Shortly before the release of SEF 238, the Commission received a submission from GWA that also concerned the calculation of the benchmark for adequate remuneration for 304 SS CRC in China.<sup>141</sup> As outlined previously, the submission was not taken in to account for the purposes of SEF 238 as it was considered that having regard to that submission would delay the publication of SEF 238. This submission has been considered in determining the benchmark in this final report.

In this submission, GWA observed the following:

- A benchmark based on ‘composite’ MEPS stainless steel prices does not only include prices for 304 SS CRC (the raw material that is the focus of the benchmark), but also other stainless steel products such as ‘long’ products. The inclusion of these irrelevant products has the potential to distort the benchmark.
- The use of a MEPS-based average benchmark that uses European and North American market prices is inappropriate, as these geographic markets are irrelevant to the cost of production in China. An Asian-based price is more appropriate. MEPS is able to provide 304 cold rolled stainless steel prices for Asian domestic markets individually (i.e. not combined into the Asian average that the Commission excluded due to the Chinese contamination of that price), and these could be used to exclude Chinese prices and determine a ‘consolidated Asian benchmark’.

In determining the most appropriate benchmark for the purposes of this report, the Commissioner has again considered all of the above, in light of the information readily available to the Commission and the lack of relevant information provided by the GOC.

### ASSESSMENT OF AVAILABLE BENCHMARK OPTIONS

#### Option One: Tasman’s application – MEPS-based world ‘composite’ price

In its application, Tasman submitted that the Commission should determine that adequate remuneration for 304 SS CRC in China be determined as a MEPS ‘world composite’ price (specifically an average of the MEPS-published European, North American and Asian stainless steel prices for 304 stainless steel flat and long products).

As mentioned above with reference to the SEF 238 benchmark, the Commissioner has observed that MEPS publishes what it labels ‘composite’ stainless steel prices by grade (including a price for 304 grade). However, the Commissioner understands that these ‘composite’ steel grade prices are for various 304 stainless steel materials that fall in both

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<sup>140</sup> Jiabaolu, *Comments on Exporter Visit Report*, 17 September 2014.

<sup>141</sup> GWA, *Supplementary submission regarding use of Stainless Steel Benchmark prices for the purposes of construction normal values*, 19 December 2014.

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the 'flat' and 'long' steel categories, making this composite price an average of not only 304 SS CRC, but other 304-grade stainless materials such as stainless steel bar.<sup>142</sup>

As outlined above, the Commission's understanding of the manufacturing process of deep drawn stainless steel sinks and its investigations with both Tasman and Chinese exporters has confirmed that 304 SS CRC is the raw material used to manufacture the goods. Other stainless steel products included by MEPS in its 304 grade 'composite' do not apply to the manufacture of the investigated goods.

As discussed below, 304 SS CRC pricing data that includes only that material is available to the Commission.

Consequently, the Commissioner considers that, in determining a reasonable benchmark for adequate remuneration for 304 SS CRC in China, it is more reasonable to use 304 SS CRC prices if available, rather than a 'composite' price that includes other stainless steel products that are not relevant to the manufacture of deep drawn stainless steel sinks.

The Commissioner therefore considers that the MEPS-based 'composite' price submitted by Tasman is not the most reasonable available benchmark for its purposes.

### Option Two: MEPS-based 'world average' price (of European, North American and Asian average MEPS 304 SS CRC prices)

Having determined that a benchmark that adopts the MEPS 304-grade 'composite' stainless steel price includes irrelevant flat and long products, the Commissioner has assessed whether a 'world average' price of 304 SS CRC based on MEPS regional averages (North America, Europe and Asia)<sup>143</sup> would be the most suitable benchmark for its purposes.

In examining the option of a North American/European/Asian 304 SS CRC price average, the Commissioner has observed that the MEPS Asian average prices include Chinese domestic prices. The findings in this report are that the Chinese price of 304 SS CRC is not representative of adequate remuneration for that raw material.

Consequently, the Commissioner considers that any benchmark that it adopts must necessarily not include this Chinese data, as to do so would contaminate the benchmark with prices that are not considered to be reasonable for the purposes of this report, and hence any benchmark that includes the MEPS Asian average 304 SS CRC price is unsuitable.

### Option Three: MEPS Asian 304 SS CRC price

In light of the finding that:

- the MEPS Asian average price includes Chinese prices rendering a world average including this Asian average unsuitable; and

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<sup>142</sup> As submitted by Tasman in its application and confirmed by GWA in its submission of 18 December 2013.

<sup>143</sup> These are the three regional stainless steel pricing averages routinely reported by MEPS.

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- Chinese 304 SS CRC is likely to have influenced other Asian market prices rendering them unsuitable for determining a benchmark (see below). It follows that the Commissioner does not consider the MEPS Asian average 304 SS CRC price on its own (as suggested by interested parties) should be used as the benchmark for 304 SS CRC in China are reasonable in the circumstances.

### Option Four: MEPS-based Asian 304 SS CRC price calculated excluding Chinese prices (i.e. Taiwanese, Korean and Japanese MEPS prices)

In its submission of 18 December 2014, GWA asserts that the Commission could arrive at a benchmark that is more geographically reasonable by determining its own MEPS-based Asian average using individual country 304 SS CRC prices reported by MEPS (which MEPS uses to derive its Asian average – Option Three above) and excluding the Chinese 304 SS CRC price from this average.

The Commissioner notes that Tasman's application<sup>144</sup> has submitted that any Asian-based benchmark price is unsuitable as the prevalence of Chinese 304 SS CRC in Asia has made prices in the region unsuitable. Specifically, Tasman's application submits:

*...as China is the world's largest producer of stainless steel products, accounting for 45% of world production, and 64% of Asian production (refer CONFIDENTIAL ATTACHMENT C-1.1.4), it is clear that any Asian based benchmark of stainless steel prices will be heavily influenced by Chinese pricing and supply behaviour. Indeed, it is submitted that other Asian stainless domestic markets are directly impacted by the size of the Chinese market.*

Confidential Attachment C-1.1.4 of Tasman's application is a stainless steel market analysis report from a reputable global steel market analysis company that reports global stainless steel production outputs (but does not differentiate this output into grade or material type).

The Commissioner has sought to assess the impact and prevalence of Chinese 304 SS CRC in the Asian market, to determine whether Asian prices other than Chinese prices are suitable for determining a benchmark for 304 SS CRC.

In the *Government Questionnaire*, the Commission requested that the GOC provide export statistics relating to 304 SS CRC and also that the GOC provide written responses to numerous other market questions, which the Commissioner considers would have been useful for it to assess the volume of Chinese 304 SS CRC entering the Asian market. However, as outlined previously in this report, the GOC declined to provide a full response to the *Government Questionnaire*, and did not provide the requested statistics or responses to relevant questions.

In the absence of this information, the Commission has undertaken its own research and relied on various information submitted by interested parties to the investigation in assessing this matter. In doing so, the Commissioner observes that:

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<sup>144</sup> Despite submitting that a world average, including MEPS Asian prices, should be adopted.

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- one Chinese supplier of the goods (of the Komodo Group) submitted that China exports about 1 million tonnes of stainless steel annually<sup>145</sup>, and that the Chinese stainless steel sector is an 'open market';
- its own research of publicly available information further found that a significant volume of 304 SS CRC is exported from China, and that a significant proportion of this is destined for Asian markets.

The Commissioner therefore considers it likely that the domestic prices in other Asian markets (such as Korea, Taiwan and Japan, the markets available for a MEPS-based benchmark) have been influenced by this prevalent Chinese 304 SS CRC (having to compete with significant volumes of imports of Chinese product). As the Commissioner considers that this Chinese price is not reflective of adequate remuneration for 304 SS CRC, it is considered unreasonable to determine a benchmark based on Asian prices that are themselves likely to have been influenced by this Chinese price.

The Commissioner therefore considers that a MEPS-based Asian 304 SS CRC price, even when calculated excluding Chinese prices, is not a reasonable benchmark for determining adequate remuneration for 304 SS CRC in China.

### Option Five: Australian import prices of Thai 304 SS CRC

The Commission notes that it is possible that substantial Chinese exports of 304 SS CRC have been made to Thailand in the investigation period, and that this has impacted on the reasonableness of Thai domestic 304 SS CRC prices such that they are no longer reasonable for determining a benchmark for Chinese 304 SS CRC prices.

In addition, the Commission has found that available import data showing Thai import prices into Australia under the relevant tariff classification includes not only imports of 304 SS CRC, but various other forms of stainless steel.

The available import data is not able to be reasonably and rationally cleansed to isolate imports of 304 SS CRC to determine a relevant benchmark (noting the above discussion that inclusion of non-304 SS CRC in any benchmark may distort the benchmark and impact its reasonableness).

### Option Six: Tasman's own 304 SS CRC purchase prices

The Commissioner 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 competitive market price, predominantly being prices from one major Asian-based 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 the chosen benchmark (outlined below).

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<sup>145</sup> The Komodo Group, *Komodo Submission on Particular Market Situation in China*, 22 July 2014.

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### Option Seven: MEPS-based average European and North American 304 SS CRC price – CHOSEN BENCHMARK

Following its consideration of available options, the Commissioner has determined that the most appropriate available benchmark for determining adequate remuneration for 304 SS CRC in China is an average of reported MEPS European and North American 304 SS CRC prices. This is the same benchmark that was adopted for SEF 238 and earlier in PAD 238.

The Commissioner has derived a monthly MEPS-based average price for 304 SS CRC using the monthly reported MEPS North American and European prices alone (and excluding the Asian price). This was calculated using the monthly reported data available from MEPS at <http://www.meps.co.uk/>.

In choosing a MEPS-based average European and North American price benchmark, the Commissioner 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 the chosen and other available options and their own relative suitability (outlined above).

The Commissioner notes that the chosen benchmark:

- includes only data related to prices of 304 SS CRC and no other irrelevant products;
- does not include any Asian pricing data that it is considered may be unreasonable due to the influence of exported Chinese 304 SS CRC in the region;
- is based on reported MEPS prices, which is a reputable independent steel pricing and forecasting service.

#### Specific consideration of North American Price

One selected exporter<sup>146</sup> 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 Commissioner to consider that including a thicker gauge of North American steel MEPS price in its average price has not resulted in an unduly high benchmark.

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<sup>146</sup> Jiabaolu, *Comments on Exporter Visit Report*, 17 September 2014.



Correction to SEF 238 benchmark calculation

In its examination of the calculated benchmark used in SEF 238 (and earlier in PAD 238) for the purposes of this report, the Commission identified a calculation error with the benchmark used where an incorrect exchange rate was being applied to determine the benchmark in RMB (for comparison with exporters' data).

This error has been corrected for the purposes of the report. Correction of the error resulted in a reduction in the benchmark price (on average 15% per monthly price).

**ADJUSTMENTS TO CHOSEN BENCHMARK**

Having determined that a MEPS European and North American average price for 304 SS CRC is the most appropriate benchmark in this case, the Commissioner 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 304 SS CRC 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 Commissioner 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 America.

Comparative advantage

The Appellate Body commented in the WTO dispute 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.*

[Emphasis added]

The Commissioner observes this apparent need to adjust for comparative advantage when using an external benchmark in most circumstances. However, the Commissioner considers such an adjustment is not reasonable or warranted in this case.

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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 304 SS CRC ). 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* 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 304 SS CRC and upstream inputs.

Secondly, in certain areas where China has developed (or is developing) a comparative advantage in producing 304 SS CRC, this has been heavily influenced by GOC activities in the Chinese iron and steel markets (by way of policies, plans and implementing measures).

The Commissioner considers that, in this way, at least some of whatever comparative advantage Chinese 304 SS CRC 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 average benchmark for the purposes of this report are EXW or undelivered prices. However, the purchases of 304 SS CRC by the selected exporters were made at delivered and EXW terms.

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To arrive at an EXW benchmark price, the Commissioner has used the verified annual weighted average delivery cost of 304 SS CRC from one selected exporter (being the only exporter whose data allowed for this isolation and comparison) to arrive at a per tonne 304 SS CRC delivery cost in China.

This delivery cost has been added to the MEPS benchmark price to arrive at an EXW benchmark price.

It is considered that this delivery cost to be reasonable as it reflects verified, actual delivery costs for 304 SS CRC incurred in China.

### Slitting costs

The MEPS European and North American prices used to determine the world average benchmark for the purposes of this report are prices for 304 SS CRC provided in coil form (i.e. not pre-slit for use in the manufacturing process).

The Commissioner has observed that Chinese exporters of the goods have made purchases of both slit and unslit (coil) 304 SS CRC 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 *Verification Visit Reports*, the Commission determined a slitting cost extra to adjust the MEPS-based average 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 Commissioner 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

When assessing whether the provision of 304 SS CRC in China by SIEs was for less than adequate remuneration a benchmark determined as an average price of MEPS European and North American stainless steel prices should be used to compare with exporters' purchase prices of 304 SS CRC from SIEs.

This benchmark should be adjusted in line with the following (where appropriate):

- the verified delivery costs of 304 SS CRC in China to arrive at a delivered benchmark; and
- the verified per tonne slitting extra cost incurred by Chinese manufactures of the goods when purchasing those raw materials.

## NON-CONFIDENTIAL APPENDIX 14 - PREVIOUS ASSESSMENTS OF 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 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

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 industry<sup>147</sup> and found evidence of numerous implementing measures put in place by the GOC<sup>148</sup> 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

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<sup>147</sup> Such as the National Steel Policy, the *Blueprint for Steel Industry Adjustment and Revitalisation Directory Catalogue* and national and regional five year plans/guidelines

<sup>148</sup> 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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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**

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 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<sup>149</sup> and again in INV 190<sup>150</sup> 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*

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<sup>149</sup> HSS exported from China.

<sup>150</sup> Aluminium zinc coated steel and galvanised steel from China.

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*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 Commissioner 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.*

As with REP 177 and REP 190, REP 198 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 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(2). 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.