



Non-Confidential

6 November 2024

By Email

Case Manager - Investigations 4
Anti-Dumping Commission
Canberra ACT 2601

Dear Sir/Madam,

Re: Continuation Inquiry 646 & Review 652– exports of deep drawn stainless-steel sinks from the People’s Republic of China

I refer to the abovementioned continuation inquiry into and review of the anti-dumping measures applying to exports of deep drawn stainless-steel sinks exported from the People’s Republic of China.

As you know, I, along with Mr Li of JuneZeJun, represent Primy Corporation Limited (**Primy**) and Zhuhai Dali Kitchen & Technology Co. Ltd (**Dali**) in this continuation inquiry and review.

Our clients make the following submissions in relation to Statements of Essential Facts Nos 456 and 652:

1. **Proposed recommendations of the Commission**

Our clients support the recommendations of the Commission that the anti-dumping measures be revoked and/or not be continued for the reasons set out in the Statements of Essential Facts. That is, notwithstanding the findings of negative dumping margins in respect of exports from the subject country by investigated exporters and residual exporters, it is apparent from the Commission’s findings that any injury incurred or likely to be incurred by the Australian industry attributable to the subject exports was and would continue to be from competition at un-dumped prices. In other words, the Australian industry was and would likely be uncompetitive against exports from the subject country even in the absence of anti-dumping measures. Hence, any material injury previously caused by dumping of the subject exports is unlikely to continue or recur in the absence of the measures, whether due to their revocation or expiry.

2. **Preliminary findings in relation to Dali’s exports**

The Commission has preliminary found that exports by Dali were not dumped with a negative dumping margin of -1.6%. Our clients do not disagree with that preliminary finding, namely, that Dali’s exports were not dumped. However, our clients do disagree with aspects of the determination and calculation of the export prices for Dali’s exports. If those issues are corrected,

then that would result in higher export prices and, consequently, a greater negative dumping margin for Dali's exports consistent with those found for the other investigated exporters.

The principle point of disagreement is with the deduction of amounts for Primy's indirect general selling and administration expenses (**indirect SG&A**) and an amount for profit in the export prices calculation for Dali.

It is neither explained nor set out by the Commission in the Statements of Essential Facts or elsewhere precisely what indirect general selling and administrative activities were actually undertaken by Primy in connection with the export of the subject goods by Dali, either before or after their exportation. As was verified during verification, all such activities were undertaken by Dali. Effectively, Primy only lent its name to Dali for the export transactions. Dali undertook all relevant activities necessary for the export of the goods to customers in Australia (i.e., the Australian importers). The only expenses related to Dali's exports incurred by Primy are the direct selling expenses, as opposed to indirect SGA, that were arranged by Dali's staff and booked in Primy's accounts. As found by the Commission, "*Dali's staff are involved in the export arrangements and book relevant costs to Primy*". There is no evidence, and the Commission referred to none, that the indirect SGA in Primy's accounts related to the exports of the subject goods by Dali to Australia.

In determining export prices pursuant to section 269TAC(1)(c) of the *Customs Act 1901*, the Commission is required to have regard to all of the circumstances of the exportation of the goods in question to Australia from the exporting country. That is, to '*arrive at the best approximation of the price that would have been paid by the importer to the exporter in an arm's length transaction, less the costs of export and any cost relevant to post export transactions*' so as to attempt to construct '*an arm's length price between the importer and exporter at the time of actual exportation*': refer *Powerlift (Nissan) Pty Ltd and Another v Minister for Small Business, Construction and Customs and Others* (1993) 113 ALR 339 at 358 (**Powerlift Nissan**) as endorsed by the Anti-Dumping Review Panel (**ADRP**) in Report 138.

In other words, the object is to construct an export an arm's length price that would have been paid by the importer to the exporter at the time of exportation. That has not been undertaken here. In this respect, the deduction of the profit recorded in Primy's account in relation to Dali's export would be contrary to the evidence, resulting in the price between Primy and Dali which were found by the Commission as not in arm's length. Nor is it reflective of the limited involvement and participation of Primy in the export transactions.

Rather, the deductions made by the Commission leave a transactional gap between the exporter (Dali) and the customers in Australia (importers). This thereby raises the question of to whom was Dali exporting the subject goods to, in what country and at what price?

Were export prices to be determined and calculated in accordance with the law, as stated by the Federal Court in *Powerlift Nissan* and by the ADRP, then the deductions would not and should not have been made. This would result in higher export prices but export prices that would actually reflect a price paid by an importer to the exporter at the time of exportation by Dali. This, in turn,

would result in greater negative dumping margin and one consistent with those of other investigated exporters.

This requires rectification.

Regarding the determination of the normal value of Dali's exports, our clients concur with the Commission's recommendation that the cost of production of the subject like goods be the cost information in the exporters' records for, amongst other reasons, those set out in the Statements of Essential Facts. It is also consistent with recent WTO jurisprudence.

Should there be any change in the Commission's recommendations and/or preliminary findings that adversely affects our clients, our clients reserve their rights to challenge any such changes.

If there are any questions, please do not hesitate to contact us.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Andrew Percival', with a large, stylized initial 'A' at the start.

Andrew Percival

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