

Non-Confidential

Memorandum
Primy Corporation Limited Submission
Response to Comments by the Anti-Dumping Commission in a Conference
with the Anti-Dumping Review Panel on 15 April 2020, Published in a
Conference Summary on 28 April 2020

Mr Paul O'Connor
Member
Anti-Dumping Review Panel
Canberra City ACT 2691

Dear Mr. O'Connor

Review – deep drawn stainless steel sinks exported from the People's Republic of China (China)

We refer to the review by the Anti-Dumping Review Panel (**Review Panel**) of the Minister of Industry, Science and Technology's (**Minister**) decision to impose antidumping measures on exports of deep drawn stainless-steel sinks from China.

Specifically, we refer to the Conference Summary of the conference between the Review Panel and representatives of the Anti-Dumping Commission (**Commission**) on 15 April 2020 published on the Review Panel's electronic public record on 28 April 2020 and, in particular, to the Commission's comments on certain issues raised by Primy Corporation Limited (**Primy**) in its application for a review of the Minister's decision.

On behalf of Primy, we make the following submissions in relation to those comments by the Commission.

In making this submission, we have confined the submissions to comments made by representatives of the Commission during the conference with the Review Panel as recorded in the Conference Summary specifically related to the grounds of Primy's application for the review. Primy is not repeating the arguments and evidences included in its Review Request submitted to the Review Panel.

At the outset, it is also worth pointing out that it is common ground between Primy and the Commission that the differences in the accessories in domestic sales and export sales needs to be adjusted for "fair comparison". It is also common ground between Primy and the Commission that the purchased accessories are the "costs" of Primy and recorded as such by Primy in its record in the normal business. The disputes between Primy and the Commission are two issues: (1) a factual issue: whether Primy's sales of purchased accessories include mark-up/profit; and (2) a legal issue: if the "market value" in the Commission's 'Dumping and Subsidy Manual' (**Manual**) to be adjusted in relation to the purchased accessories is the "market value" of Primy's purchase, or the "market value" of the accessories included in the selling price of Primy. Primy continues to analyze both the disputed issues and other issues raised by the Commission in the conference with the Review Panel as reflected in the Conference Summary.

I. Clarification of factual situation: Primy's sales of accessories include markup

In paragraph 38 of the Conference Summary, it is summarized that “the ADC representatives noted it had not been presented with any evidence in the course of the inquiry, particularly at verification, to suggest that Primy’s intention or practice was to include a markup on accessories sourced externally.” This is not a true reflection of the facts in the course of the inquiry.

In the course of the inquiry, Primy has clearly presented to the Commission that accessories and sinks are sold together as **a single product** with a **single markup** that applies to both sinks and accessories, therefore, Primy’s sales of the accessories (regardless whether the accessories are self-produced or purchased) has markup or profit. Primy does not have a practice that the purchased accessories are to be sold by Primy as the purchased price/costs. There is nothing on the record suggest this is the case. The record evidences suggest the contrary.

As Primy has referenced in Attachment A to its review application, specifically section 2(2)(b) of its response to Question 9, in Primy’s Comment on the SEF, Primy has specifically presented to the Commission that “the sinks and accessories are **sold together** and **priced together** by Primy **as one single product** code and any markups would apply to both sink and accessories together.” This presentation to the Commission was in the course of the inquiry.

The ADC representative noted “particularly at verification”, Primy has not presented with any evidence to suggest the accessories are sold with markup. The ADC seems to hint that the above presentation of Primy is after the verification and could not be accepted. This is wrong for multiple reasons.

- (1) In the original investigation, the Commission did not make accessories adjustment in the dumping margin calculation, because the Commission accepted the product model consisting of sinks together with the accessories forming one single product with single costs, and normal value was calculated based on costs of sinks and accessories together. In this inquiry, SEF constituted the first opportunity for Primy to know that the Commission, departing from its previous normal value calculation methodology, is making accessories adjustments for domestic sales and export sales in the dumping margin calculation. Before seeing the SEF, there was no way for Primy to guess the Commission would deviate from its original investigation, and decided to apply accessories adjustment in this inquiry. Also, only in the SEF, the Commission has disclosed its reliance on MCC for categorizing the subject products and its criteria for classifying MCC. Without knowing these methods of the Commission for the first time in the SEF, Primy would have no way to assess the accessories combinations of products grouped into different MCCs by the Commission, and assess the reasonableness or unreasonableness of accessories adjustment in such MCC groups to make relevant presentations to the Commission. Therefore, Primy used its first opportunity in its comment on the SEF to present specifically to the Commission that the sales of accessories are with markup and need to be adjusted accordingly.
- (2) It is also not true that evidences have not been presented to the Commission that sales of accessories are with markup, “particularly at verification”. During the verification, at the request of the Commission verifiers, Primy has presented evidences that the sinks and accessories are priced together as a single product. For example, in Verification Exhibits on the “Domestic Sales Traces” and “Export Sales Traces”, Primy has submitted to the verifiers POs and BOMs of the sales traces selected by the verifiers, which shows that Primy has a single price for sinks and accessories in a product code. (in **Confidential Exhibit 1** and **Confidential Exhibit 2** to this comment, Primy submits one sample domestic sales trace and one sample export sales traces among the Verification Exhibits to the Panel as examples. In Exhibit 1, DS3140906012 is the product code selected by the verifiers, in the document “PO” its shows this product code of sinks and accessories are sold in “set” with a single price, and in “BOM”, it is shown that

DS3140906012 include both sinks and various accessories. In Exhibit 2, in document "Invoice", product code 2000365 and 2000366 are respectively sold as single product at a single price, and in document "018 customer product specification" (note: the document placed after the bill of lading), it is clear product code 2000365 and 2000366 consist of both sinks and certain accessories) Such Exhibits presented to the Commission during the verification constitutes evidences that Primy does not have separate price or price quotes for sinks with profit/markup and accessories without profit/markup at the purchase value or production cost of the accessories. Sinks and accessories are sold and priced together as a single product and therefore any markups on the single product would apply to accessories.

In addition, the verification is for the ADC verifiers to verify the accuracy and completeness of Primy's responses. If the Commission had in mind to adjust the impact of differences in accessories on domestic price and export price, a drastic change from the methods in the original investigation, it would be up to the Commission to specifically verify the information it deems needed for a correct adjustment.

- (3) It is also not correct for the Commission to hint that the facts presented by Primy in its Comment to the SEF is not acceptable because it is presented after the verification. Also after the verification, in multiple emails sent to Primy dated September 19, October 10, October 11, the Commission requested Primy to provide various information which the Commission used in its determinations, including accessories purchase prices the Commission finally used in its adjustment of accessories costs in the normal value. It is not correct for the Commission to use information submitted after the verification when it prefers to use, and fault the presentation after verification because it prefers not to use them. Same standard should be applied.

II. Section 269TAC(8) and the Dumping and Subsidy Manual (Manual) requires the adjustment of "market value" of accessories reflected in the selling prices, not "market value" of the purchase costs

In the Conference Summary, the ADC has explained and argued that the addition of profit to the production costs as required by the Manual is to capture "the market value of the production cost difference" (paragraph 33 of the Conference Summary), Primy agrees.

The ADC continues to explain and argue that the "the purchase price of the accessories by Primy is already the "market value" of the accessories because they were "purchased from the market at presumably a market price." (paragraph 34 of the Conference Summary). Since the Manual requires to adjust "market value" and Primy's accessories purchase price already reflect "market value", "no adjustment for profit was considered necessary as the accessory was purchased from the market at presumably a market price". (paragraph 36 of the Conference Summary)

The ADC has misconstrued the concept of "market value" in the Manual, without taking proper consideration of the legal purpose of the adjustment as provided for in Section 269TAC(8) as reflected in the Manual. In addition, the ADC has not applied the concept of "market value" in the Manual properly to the specific situation of Primy. It is worth pointing out that Primy's challenge on the practice of the Commission, is based on Section 269TAC(8), as correctly reflected in the initiation notice by the Review Panel, that "was not in line with the requirements under section 269TAC(8) of the Act to ensure a fair comparison between normal value and export price".

Relevant provision of section 269TAC(8) provides that:

"(8) Where the normal value of goods exported to Australia is the price paid or payable for like goods and that price and the export price of the goods exported:

(b) are not in respect of identical goods; or

that **price** paid or payable **for like goods** is to be taken to be such a **price adjusted** in accordance with directions by the Minister so that those differences would not affect its comparison with that **export price**" (emphasis added)

Relevant part of section 15.3 of the Dumping and Subsidy Manual ("the Manual"), in relation to "Adjustments" for "Physical characteristics and quality", provides that:

"However, there may be situations where direct evidence of price differences cannot be provided (e.g. models sold domestically and exported to Australia are different). In these situations, adjustments for differences in physical characteristics or quality, where it reasonably affects price comparability, may be based on production cost differences plus the addition of the gross margin (i.e. the administrative, selling and general costs and profit) to the production cost difference. This is a means for calculating an adjustment **that reflects the market value** of the production cost difference." (emphasis added)

First of all, in paragraph 32 of the Conference Summary, the ADC acknowledged that "the Manual does not address this exact scenario." Since the scenario is not specifically addressed in the Manual, in order to properly understand how the scenario should be addressed under section 269TAC(8) and the Manual, the ADC needs to understand the phrase "market value" by taking into account the legal purpose of these provisions, which is to adjust the differences in physical characteristics (in this scenario, purchased accessories) affecting the **selling prices** of the respondent in domestic markets and export markets, so that the **selling prices** of the respondent in the two markets can be compared on a fair basis. This is clearly provided for in section 269TAC(8)) that the "**price adjusted**" is to the "**price** paid or payable for like goods" for the comparison with "the export **price**". This is also clearly provided for in the Manual, which provides that the adjustments for differences in physical characteristics or quality is for "the size of the **price** difference".

There are difference levels of "market value" of the accessories, including (1) the "market value" of the accessories as in the purchase price of Primy from third party suppliers, (2) the "market value" of the accessories as in the selling price of Primy, and (3) the "market value" of the accessories as in the selling price of Primy's customers to their own customers. To determine which of these "market values" is the "market value" for adjustment referenced in the Manual depends on the proper understanding of the legal purpose of the adjustment required by Section 269TAC(8) and the Manual, not "any" "market value" would do.

Since the purpose of the adjustment is to adjust the difference of physical characteristics affecting the like product price and export price so there would be a "fair comparison" between the two prices, the "market value" for adjustment in the Manual is the "market value" of the elements of physical difference as contained and reflected in the like product price and export price. For production costs of self-produced elements, when the profit margin (and SGA) is added to the self-production costs, it reflects a "market value" of the self-produced elements as contained in the like product **prices** as sold by the respondent, not the costs to the respondent. If the "market value" can be understood as any "market value" without taking into account of the effect on the selling **prices** as sold by the respondent, the respondent's purchase price of stainless steel is also "market value", the labor salary and energy purchase price by the respondent used in processing the stainless steel are also "market value" of these inputs, there is no need to add profit margin to reach the "market value" of the physical elements as reflected in the selling **price** of the respondent.

For the same reason and logic, in the scenario of purchased accessories by Primy, the "market value" adjustment envisaged in the Manual is neither (1) the "market value" of the accessories as in the

purchase price of Primy from third party suppliers, nor (3) the “market value” of the accessories as in the selling price of Primy’s customers to their own customers, because none of them are the “market value” of accessories as contained in the like product **price** or export **price** of Primy, the subjects of “fair comparison”. It is (2) the “market value” of the accessories as in the selling price of Primy that is the “market value” to be adjusted, and this requires addition of profit margin to the purchase value of accessories. The purchase price of Primy of the accessories reflected the “profit margin” of the accessories suppliers, not the “profit margin” contained in the selling price of Primy for its sales of accessories (together with sinks) as envisaged and required in the Manual.

ADC acknowledged that the verified information of Primy demonstrated that the purchase price of the accessories is **in lieu of the production costs**, not the value of accessories in the selling **prices** of Primy. The ADC stated that the accessories purchase price “**becomes a cost of production** in its own right, in terms of an inventory cost,”(paragraph 37 of the Conference Summary) and “At verification, the ADC noted the cost of the accessories sourced externally were recorded as **cost items** in Primy’s **costs to make and sell data**.” Therefore, for the purpose of determining “market value” of the accessories in Primy’s selling **price**, the accessories purchase price is in the same nature as production costs, and for the adjustment of like product price and export price of Primy for the fair comparison between the selling **prices**, the addition of profit margin on top of the purchase price of accessories is necessary.

illustration Example:

Primy believes an illustration example would be most efficient to present to the Panel why the ADC’s method leads to inappropriate adjustments that artificially inflates the dumping margin, and Primy’s method reflects the actual situation of dumping margin, if there is any.

Example No. 1:

There is one MCC in domestic sales with cost of sink 60, cost of accessories 20 (either self-produced or purchased), sink and accessories sold together as single product, with single profit margin of 30%, leading to single domestic price for sink and accessories together at 104; same MCC in export sales with cost of sink 60 (same as domestic sales), cost of accessories 3 (either self-produced or purchased) (note: it is established in the investigation and final determination and not disputed that accessories in export sales is considerably less than the accessories in the domestic sales), sink and accessories sold together as single product, with single profit margin of 30% (same profit margin), leading to single export price for sink and accessories together at 81.9.

In this example, it is clear that the price difference between domestic sales and export sales of this MCC is caused not by the difference in the sinks cost and profit, but is caused by the difference in the costs and profit of the accessories in the two markets. The price of the subject merchandise, sinks, in both markets is $60 \times 130\% = 78$. The profit margin is the same. There is simply no dumping of the subject products under this MCC.

In the calculation methodology of the Commission, i.e., making adjustment of the accessories difference only based on the cost of accessories, without adding the profit margin, the formula and result of normal value after the adjustment is $104 - 20 + 3 = 87$. The normal value so calculated consists of $60 \times 130\%$ (sinks cost and profits) + 3 (export accessory cost) + $20 \times 30\%$ (domestic accessory profit) = 87. Thus, a dumping amount for this MCC is calculated as $87 - 81.9 = 5.1$, and a dumping margin for this MCC is calculated as $5.1 / 81.9 = 6.2\%$. The dumping amount **5.1** is the DIFFERENCE in profit realized of domestic sales accessories combination and export accessories combination in domestic market $(20 - 3) \times 30\% = 5.1$. Thus, the adjustment method of the Commission failed to adjust the “price paid or payable for like goods” “so that those differences would not affect its comparison with that export

price” (section 269TAC(8)), and the dumping amount and dumping margin calculated is simply caused by and reflect the DIFFERENCE in accessories between domestic sales and export sales that affect the fair comparison between the price for like goods and export price. This clearly is in violation of the fair comparison obligation under section 269TAC(8) and the dumping margin is artificially calculated due to the error in the adjustment of accessories costs without adding the profit margin.

The proper adjustment of difference in accessories between domestic sales and export sales should include the profit margin, which would result in $104 - 20 * 130\% + 3 * 130\% = 81.9$, truthfully showing same profit margin and same price is realized in both domestic market and export market when difference affecting the price comparability has been properly adjusted as required by section 269TAC(8).

Example No. 2:

Use the same example, but this time the profit margin of the export sale is 15%. Then the domestic sales price for sink and accessories remains at 104, and export price is 72.45. The price of the subject merchandise, sinks, in domestic market is $60 * 130\% = 78$, and in the export market is $60 * 115\% = 69$, dumped by $78 - 69 = 9$; and the dumped amount for the export accessories due to difference in domestic profit margin and export profit margin is $3 * (30\% - 15\%) = 0.45$; and the total dumped amount of sink and export accessories is $9 + 0.45 = 9.45$, and the dumping margin is $9.45 / 69 = 13.7\%$. In the calculation methodology of the Commission, the normal value after the adjustment is $104 - 20 + 3 = 87$. The dumping amount for this MCC is calculated as $87 - 72.45 = 14.55$. The inflated dumping amount is $14.55 - 9.45 = 5.1$, and the dumping margin for this MCC is calculated as $14.55 / 72.45 = 20\%$. The Commission’s adjustment method exaggerated the dumping margin by $20\% - 13.7\% = 6.3\%$, i.e., 6.3 percentage points.

Therefore, no matter whether there is actual dumping or not, the Commission’s adjustment method of not including profit margin for accessories value in the selling prices, would lead to artificial inflation of dumping margin, or from no dumping to dumping.

III. Primy has proposed to add profit margin to accessories adjustments for both domestic sales and export sales

In paragraph 41 the Conference Summary, it is summarized that “The ADC representatives noted, although Primy was arguing for the inclusion of a profit margin by way of an adjustment to domestic selling prices it was silent as to whether a similar adjustment was needed in relation to its export transactions.” Again, this is not correct reflection of the inquiry process.

In Primy’s comment submitted to the Commission on revised calculation of Primy’s dumping margin in an email dated February 6, 2020, Primy specifically stated that the Commission should have include profit margin in the adjustments for both accessories costs for domestic sales and accessories costs for export sales as in “the Commission should make the above-mentioned deduction of domestic accessory costs and **addition of the export accessory costs** to the normal value by adding the []% profit margin.” (page 1 of the Comment, emphasis added)

IV. Value of accessories self-produced and purchased

In paragraph 43 of the Conference Summary, the Panel “sought confirmation from the ADC as to the overall value of accessories produced internally when compared to the value of those sourced externally.” ADC did not provide the Panel with such information.

Actually, the percentage of the overall value of Primy’s self-produced accessories and purchased accessories is on the record of this inquiry before the ADC, as in the costs information requested for and provided by Primy during the verification.

In Verification Exhibits, in response to a request by the ADC verifiers, Primy submitted its costsheets of stainless steel sinks in the normal business for three months during the IP, July, August, and September 2018. In these costsheets, there are two columns, titled "Accessories 1" which is self-produced accessories, and "Accessories 2" which are purchased accessories. Primy has added up the total of "Accessories 1" and "Accessories 2" respectively for the three months and total value of "Accessories 1", i.e., self-produced accessories is []% of total accessories value, and the total value of "Accessories 2", i.e., purchased accessories is []% of total accessories value. Please refer to **Confidential Exhibit 3** to this comment of the summary calculation table prepared by Primy based on the Verification Exhibits.

Please note that the costsheets for sinks referred to above do not include the costs for faucets, which are in a separate costsheets specifically for faucets production, also submitted to the ADC verifiers as verification exhibits. Therefore, the value and percentage of the self-produced accessories do not include that for faucets.

V. Conclusion

For the reasons specified in Primy's Review Application and the analysis above, Primy respectfully requests the Review Panel to find that the Commission should include the profit margin in its adjustment for the accessories in the price of like product and export price, and such corrections should be conducted in relation to the dumping margin calculation for Primy.