



**INVESTIGATION INTO DEEP DRAWN STAINLESS STEEL SINKS
FROM THE PEOPLE'S REPUBLIC OF CHINA
ANTI-DUMPING REVIEW PANEL REVIEW
ANTI-DUMPING COMMISSION INVITATION TO COMMENT**

1. BACKGROUND

After considering the findings and recommendations of the Anti-Dumping Commissioner (the Commissioner) contained in Anti-Dumping Commission Report 238 (REP 238), the Parliamentary Secretary to the Minister for Industry and Science (the Parliamentary Secretary) decided to publish a dumping duty notice and a countervailing duty notice in relation to certain deep drawn stainless steel sinks exported from the People's Republic of China (China). Notification of this decision was made on 26 March 2015.

Following this decision, the Anti-Dumping Review Panel (ADRP) received applications for review of aspects of the Parliamentary Secretary's decision from the following two interested parties:

- Everhard Industries Pty Ltd (Everhard); and
- Milena Australia Pty Ltd (Milena).

The ADRP has accepted these applications for review on all grounds contained in the applications and is currently undergoing its review of the matters raised by these parties.

As part of its review, the ADRP has invited the Anti-Dumping Commission (the Commission) to comment on the matters raised in the applications. The Commission's assessment of the claims is below.

2. APPLICATION FROM EVERHARD

2.1. Summary of grounds for review

Everhards's application contains only one ground of review – that individually-imported lipped laundry tubs (referred to by Everhard as lipped SS laundry tub bowls) should be exempted from the anti-dumping measures by the Parliamentary Secretary under s.8(7)(a) and 10(8)(a) of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act).

As per the requirements of those provisions, Everhard contends that the Australian industry (Tasman Sinkware Pty Ltd (Tasman)) does not produce like or directly

competitive goods to the imported lipped laundry tubs, and as a result the imported goods are eligible for an exemption from anti-dumping measures.

2.2. Identification of irrelevant information

The Commission has not identified any irrelevant information in Everhard's application.

2.3. Disputed factual claims

The Commission disputes the following factual claim by Everhard:

Claim	Commission's response
<i>'Lipped SS Laundry Tub Bowls are not interchangeable with drop-in / benchtop sinks, which are the subject goods of this investigation due to their shape, configuration and application.'</i>	The Commission does not dispute that lipped laundry tubs and the Australian industry's 'drop in' laundry tubs cannot be used in the exact same cabinetry and hence cannot be directly swapped for each other for installation in the type of cabinetry required for each. However, the Commission considers that these products do have a degree of interchangeability, particularly in relation to application, as both serve the same end use (laundry sink) and both could be installed in certain (though not all) laundry applications (in different cabinetry types).

2.4. Commentary on grounds and additional background information

The Commission considers that it is not open to the Parliamentary Secretary to grant an exemption from anti-dumping measures in relation to lipped laundry tubs, as the Australian industry (Tasman) produces like goods.

Non-Confidential Appendix 1 of Report 238 details the Commission's reasons for this position. In summary:

- S.8(7)(a) and 10(8)(a) of the Dumping Duty Act allow for an exemption from anti-dumping measures on certain imported goods whether the Australian industry does not offer for sale (on like terms) like or directly competitive goods to those imported;
- The Commission considers that this means that if Tasman produces:
 - like goods; or
 - directly competitive goods
 an exemption cannot be granted.
- There is no definition of 'like or directly competitive goods', or 'directly competitive goods' as terms in and of themselves in the Dumping Duty Act, the *Customs Act 1091* (the Act) or the WTO agreements.
- Section 269T of the Act does, however, define "like goods" as a discrete term:

... Goods that are identical in all aspects 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 Commission considers that, for the purpose of this provision, the term 'like goods' should be interpreted in the same way as that same term in the Act.
- The Commission has a 'like goods' framework as set out in the *Dumping and Subsidy Manual* (the Manual) that guides how like goods should be determined.
- Applying the definition in the Act and the like goods framework, the Commission considers the Australian industry does produce like goods to lipped laundry tubs (refer to Report 238 for reasons).
- Lipped laundry tubs are therefore not eligible for this exemption.

2.5. Relevant information to ground of review

Discussions relating to lipped laundry tubs is contained in detail in Part III(ii) of Non-Confidential Appendix 1 of Report 238.

Other relevant documents concerning the issue of lipped laundry tubs are detailed below.

Document type	Party	Public record folio number
Submission	Milena	50
Submission	GWA Group (Australia) Ltd	51
Submission	Tasman	63
Submission	Tasman	83
Submission	Tasman	95
Submission	Everhard	66
Submission	Everhard	79
Submission	Tasman	83
Submission	CLR Maintenance Group on behalf of Everhard	87
Submission	Seima Pty Ltd	86
Submission	Milena	85
Verification report – importer	Everhard (Commission's report on verification visit)	36
Verification report – importer	GWA Group (Australia) Ltd (Commission's visit report)	42
Issues paper – the goods and like goods	Commission	78

3. APPLICATION FROM MILENA

3.1. Summary of grounds for review

Milena's application to the ADRP includes seven listed grounds for review. These are outlined below.

Ground 1 - Inadequate notification and communication with interested parties

Milena submits that it did not receive direct notification of the investigation from the Commission, nor did its Chinese exporter of the goods.

Milena considers that the Commission should have made greater efforts to ensure direct contact with interested parties both locally and in China.

Ground 2 - Unwillingness to review during investigation

Milena considers the Commission should have been willing to accept a late exporter questionnaire (which Milena describes as ‘putting an exporter forward’) to allow Milena’s exporter to cooperate with the investigation.

Milena submits that it highlighted the possibility of its exporter wishing to cooperate with the investigation in August 2014, and was told at the time by the Commission that this would not be considered by the Commission in the investigation. Milena challenges this decision by the Commission.

Ground 3 - Decision to include lipped laundry tubs as like goods was not correct

Milena submits that lipped laundry tubs are not like goods to goods produced by Tasman.

While not specifically stated, the Commission considers that Milena intends to submit the same ground as Everhard discussed above – that lipped laundry tubs should be granted an extension by the Parliamentary Secretary under the Dumping Duty Act, based on the ground that Tasman does not produce like goods to these sinks.

Ground 4 - Decision to exclude stand-alone laundry units (either assembled or kits) was not correct

Milena considers that, based on the finding that lipped laundry tubs are not like goods (above), the Commission’s other finding that stand alone laundry units ‘were Not Like Goods’ is absurd. This appears to be due to the fact that Milena considers that the impact of this decision will be for Australian laundry unit makers to move local production of laundry units offshore.

The Commission notes there seems to be some confusion by Milena of what the Commission’s actual findings were – discussed further below.

Ground 5 - Unnecessarily punitive levy placed on uncooperative and other exporters

Milena considers it is not reasonable to apply a ‘punitive’ rate of anti-dumping measures to uncooperative exporters of the goods.

Milena considers that this punitive rate is unfair as:

- many exporters subject to it were naïve and are only uncooperative because they didn’t understand the Australian anti-dumping system, including whether they could be considered to be dumping if they do not sell locally;

- many interested parties did not receive direct notification of the investigation – see ground 1) above.

Ground 6 - Currency exchange rates not fully factored in investigations (recommendations)

Milena appears to submit that the Commission should have taken account of movements in exchange rates between the investigation period and the time of making its final recommendations to the Parliamentary Secretary (when determining the rate of anti-dumping measures to be imposed and possibly if they should be imposed at all).

Ground 7 - Currency exchange rates not fully factored in (method of setting measures)

Milena considers that the fact that currency fluctuations occur regular mean that the imposition of anti-dumping measures as an ad valorem percentage of the FOB export price in \$USD is inappropriate.

3.2. Identification of irrelevant information

Ground for review number	Irrelevant information identified
1	<p>Milena did not lodge any formal complaint or submission in relation to the Commission's notification procedures during the investigation.</p> <p>In a telephone conversation during the investigation with the case manager, Andrea Stone, Milena explained that it had not received individual notification and the notification process was explained to Milena and that it was considered that this was reasonable and sufficient.</p> <p>No submissions were received in response to this, though on 26 August 2014, Andrea Stone wrote to Milena providing specific information on how Milena could make submissions to the investigation (Attachment 5 of Milena's application)</p> <p>The Commission's records show that, on 15 September 2014, Milena requested a conference call with the Commission during the investigation (though it did not state the matters to which this related). The Commission responded accepting this request, but this was not taken up by Milena.</p> <p>It is only after the investigation that Milena has raised this complaint in writing with the Commission.</p> <p>The Commission therefore questions whether this is a ground for review that Milena is able to lodge to the ADRP that contains irrelevant arguments/claims.</p> <p>However, as Milena did raise notification procedures with the Commission during the investigation, the Commission has addressed this issue in this document in any case.</p>

Ground for review number	Irrelevant information identified
2	<p>Milena did not lodge any formal complaint or submission in relation to the Commission's advice that Milena's exporter would not be considered to have cooperated with the investigation even if it submitted a later exporter questionnaire response.</p> <p>As with notification procedures, in a telephone conversation during the investigation (26 August 2014) Andrea Stone advised Milena that, even if its exporter submitted a response to the exporter questionnaire after that date, the Commission would not consider this to be cooperation with the investigation as the exporter questionnaire deadline had long passed. No submissions were received in response to this.</p> <p>As noted above, the Milena did not pursue a conference call with the Commission following its initial request in September 2014, which may have canvassed this issue.</p> <p>It is only after the investigation that Milena has raised this issue in writing with the Commission.</p> <p>The Commission therefore questions whether this is a ground for review that Milena is able to lodge to the ADRP that contains irrelevant arguments/claims.</p> <p>However, as Milena did raise treatment of its Chinese exporter with the Commission during the investigation, the Commission has addressed this issue in this document.</p>
3	None identified
4	None identified
5	<p>The fact that punitive measures were imposed on uncooperative exporters was not challenged by Milena or any other interested party during the investigation. It has at no stage been raised with the Commission during or following the investigation.</p> <p>The Commission therefore questions whether this is a ground for review that Milena is able to lodge to the ADRP. However, the Commission has addressed this issue in this document in any case as the method of calculating dumping and subsidisation of exporters and the data used to do these calculations was before the Commissioner during the investigation.</p>
6	<p>This argument was not made to the Commission during the investigation and no submissions were made on this matter.</p> <p>The Commission considers that this is an irrelevant consideration for the ADRP as it was not before the Commissioner at the time of making his report to the Parliamentary Secretary and should thus not be included in the ADRP review.</p> <p>If the ADRP determines this matter should be reviewed, the Commission would welcome further opportunity to make a submission in relation to this ground.</p>
7	<p>This argument was not made to the Commission during the investigation and no submissions were made on this matter.</p> <p>The Commission notes its intention to recommend this type of measures was clearly identified in its Statement of Essential Facts (SEF), which interested parties were invited to comment on.</p> <p>The Commission considers that this is an irrelevant consideration for the ADRP as it was not before the Commissioner at the time of making his report to the Parliamentary Secretary and should thus not be included in the ADRP review.</p> <p>If the ADRP determines this matter should be reviewed, the Commission would welcome further opportunity to make a submission in relation to this ground.</p>

3.3. Disputed factual claims

Ground for review number	Claim	Commission's response
1	Milena appears to claim that the Commission did not make efforts to make individual direct contact with all identified Chinese exporters and Australian importers of the goods.	<p>While the Commission considers that it is under no obligation to attempt to make individual contact with interested parties, it notes that, in the case of deep drawn stainless steel sinks, the Commission <u>did</u> make efforts to individually contact identified importers and exporters of the goods.</p> <p>On the date of initiation (or shortly thereafter), the Commission:</p> <ul style="list-style-type: none"> • telephoned and/or emailed importers identified as 'major' importers (retrieving contact information from the internet) to advise of the investigation and request they complete an importer questionnaire; • sent all remaining identified possible importers a letter notifying of the initiation and that they could make general submissions to the investigation; and • sent all identified possible exporters a letter notifying of initiation and advising them they could complete an exporter questionnaire and/or make general submissions to the investigation. <p>This was in addition to other actions taken by the Commission to notify parties.</p> <p>Possible importers and exporters of the goods were identified by the Commission by accessing import records in the Australian Customs and Border Protection Service's (ACBPS) imports database, which is populated by importers when making legal declarations to ACBPS when importing goods to Australia.</p> <p>This is discussed further in Section 3.4 below.</p>
2	Milena appears to submit that the Commission is required to have regard to exporter questionnaires that are received after the questionnaire deadline but before the SEF if, to do so, would not delay the timely publication of the SEF.	<p>The Commission agrees that it is obliged to have regard to any <u>submissions</u> received after day 40 of an investigation if, to do so, would not delay the timely completion of the SEF. However, the Commission notes the following:</p> <ul style="list-style-type: none"> • this requirement is not considered to extend to consideration of exporter questionnaires; and • in any case, to have regard to an exporter questionnaire received after late August would have certainly delayed the Commission's SEF and subsequent final report to the Parliamentary Secretary in any case. <p>This is discussed further in Section 3.4 below.</p>

Ground for review number	Claim	Commission's response
4	Milena appears to consider that the Commission 'excluded' stand-alone laundry units from the investigation based on a finding that Tasman does not make 'like goods' to these products.	<p>The Commission considers that Milena has misunderstood the rationale and mechanism for these products' exclusion from measures.</p> <p>The Parliamentary Secretary has <u>not</u> excluded these laundry units from anti-dumping measures under the Dumping Duty Act.</p> <p>Instead, the Commission found that the investigation (and subsequent anti-dumping measures) <u>does not extend</u> to these laundry units as they <u>do not fit within the parameters of the goods subject to investigation</u> (and later measures).</p> <p>This is discussed further in Section 3.4 below.</p>

3.4. Commentary on grounds and additional background information

Ground 1 - Inadequate notification and communication with interested parties

The Commission considers that it not only complied with its legislative notification requirements of the initiation of the investigation, it went further to attempt to make individual contact with possible interested parties to the investigation. It is considered that the steps taken were not only reasonable, but above and beyond what is reasonable, necessary and required.

S.269TC(4) requires that, if the Commissioner decides to not reject an application lodged under s.269TB, public notification of the investigation must be made. This public notice was placed in *The Australian* newspaper on 18 March 2014 (date of initiation).

On that same date, the Commission:

- wrote to the Government of China (through the Chinese Embassy in Canberra) notifying them of the initiation;
- published an initiation anti-dumping notice (ADN) on its webpage; and
- established an individual case page (containing investigation details) and electronic public record on the Commission's website.

Without any further action, the above constitutes reasonable steps to notify interested parties of the investigation and meets all legislative requirements applicable to the initiation of such an investigation and is considered reasonable steps of notification..

However, as discussed above, in the case of deep drawn stainless steel sinks, on or shortly after initiation date, the Commission went further by sending correspondence to all known possible importers and exporters of the goods. This amounted to in excess of 700 individual letters.

These parties were identified using the historical import data in ACBPS' imports database and were contacted on the details contained in that database (generated from legally binding delectations to ACBPS).

The Commission notes that Milena has submitted that it did not receive any such correspondence, nor did its Chinese exporter. The Commission's records show that Milena and its named exporter were not identified in the ACBPS database. This could be for several reasons including:

- misclassification of goods by the importer (as only relevant tariff classifications were examined); or
- no imports being made by Milena during the data period retrieved from the ACBPS database (the investigation period).

For this reason, the Commission's records do not show that either party was sent an individual letter. However, reasonable notification steps were taken in any case to notify all interested parties and the Commission does not consider this to mean that it failed to take reasonable steps to notify Milena and its exporter.

The Commission has records of its mail out should the ADRP wish to examine these further.

Ground 2 - Unwillingness to review during investigation

The Commission agrees with Milena's assertion that it is required to have regard to all submission received from interested parties, even if they are received after Day 40 of an investigation, only if their consideration does not delay the timely publication of the SEF and subsequently the final report. However, as a matter of policy and practice, this requirement does not extend to exporter questionnaires and in fact relates to general submissions in response to the application, as notified in the public notice of initiation of the investigation.

The consideration of exporter questionnaires is a separate matter to the above and is guided by the principal that exporter questionnaires must be submitted by the published due date or an agreed date thereafter if an extension is requested formally to the Commission and this is granted. In any case, these extensions are usually very limited (between one and two weeks). Questionnaires received after these dates are not accepted by the Commission.

The rationale behind this is due to the fact that the Commission's investigation can only progress to determining whether there has been dumping and/or subsidisation once the Commission is certain of the exporters who wish to cooperate with the investigation (by completing a questionnaire, and being open to verification, as detailed in the introduction to the questionnaire). Consequently, it is not practicable for the Commission to allow for the delayed submission of exporter questionnaires as this would significantly impede the investigation.

For example, in the case of deep drawn stainless steel sinks, the Commission was only able to select the three exporters chose for individual investigation and classify the remaining respondents as residual exporters after it received all questionnaire

responses. The outcome of this process ('sampling') was notified by the Commission in its sampling report on 6 June 2014, well before Milena's first contact with the Commission.

Another consideration is that, had the Commission allowed for Milena's exporter to provide a significantly delayed response to the exporter questionnaire, it would be unreasonable to deny any other exporters that failed to meet the initial deadline that opportunity. As this investigation potentially involved in excess of 400 exporters, this could result in a significant influx of additional questionnaires that the Commission would not physically be able to assess within the investigation's timeframe.

Ground 3 - Decision to include lipped laundry tubs as like goods was not correct

As this is the same ground contained in Everhards's application, the Commission refers the ADRP to discussion of Everhards's claims at Section 2 above.

Ground 4 - Decision to exclude stand-alone laundry units (either assembled or kits) was not correct

As outlined above, the Commission has found that stand alone laundry units (whether imported fully assembled or in complete kits) are not the goods subject to the investigation and the anti-dumping measures that have resulted from the investigation.

The rationale for this decision is detailed in Non-Confidential Appendix 1 to REP 238. In summary, REP 238 finds:

- The goods subject to anti-dumping investigations and any subsequent measures are scoped by a description of the goods to be investigated.
- The goods description in this case is:

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.

- Stand-alone laundry units that arrive fully assembled or in a kit that contains the necessary components to assemble a free-standing laundry unit:

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.¹

¹ REP 238, page 109.

- Consequently, as these products contain various items essential to the product's ability to function which do not fall inside the parameters of the goods description, they hence should not be subject to this investigation or the resulting measures.

The Commission notes that Milena's objection to this finding in its application does not appear to rely on the reasonableness of the decision in and of itself (i.e. the grounds for making the finding and the rationale of the finding) but rather that its outcome is, in Milena's view, 'absurd' as it may result in undesirable changes in patterns of trade.

The Commission notes that its findings were made in line with the established policy and practice of the Commission and through a reasonable and objective examination of the parameters of the goods description and the physical characteristics of standalone laundry units.

Ground 5 - Unnecessarily punitive levy placed on uncooperative and other exporters

Milena's application on this ground appears to relate to:

- the company's submission that reasonable steps were not taken to notify parties of the investigation;
- the Commission's decision to not allow the late submission of exporter questionnaires.

In light of the above, Milena appears to submit that it is unfair to provide a higher rate to exporters deemed not to cooperate with the investigation when they may not have been directly notified.

The Commission's submission in relation to its notification steps and their reasonableness is discussed above.

While the Commission notes that Milena does not appear to challenge the Commission's ability to impose these 'punitive' rates of anti-dumping measures, the Commission takes this opportunity to note:

- s.269TAB(3) provides that, when satisfied that sufficient information has not been furnished to determine export price under other provisions of that section, export price can be determined having regard to all relevant information;
- s.269TAC(6) provides that, when satisfied that sufficient information has not been furnished to determine normal value under other provisions of that section, normal value can be determined having regard to all relevant information; and
- s.26TAACA provides that, where an interested party has not provided relevant information to a countervailing investigation, when determining whether a subsidy has been received and its amount, determinations may be made with reference to facts available, making reasonable assumptions.

The Commission's specific policy and practice for determining normal values under s.269TAC(6) is discussed in the *Dumping and Subsidy Manual*.

In the case of exporters that did not cooperate with the investigation, these exporters did not furnish any information considered sufficient for determining export price and normal value under the proceeding provisions of s.269TAB or TAC. The Commission therefore relied on all relevant information in determining export prices and normal values (see 6.14.1 and 6.14.2 of REP 238) and receipt and amount of countervailable subsidisation (see Non-Confidential Appendix 8 of REP 238).

Ground 6- Currency exchange rates not fully factored in investigations (recommendations)

This ground is a new argument that was not available to be considered by the Commissioner in making his report to the Parliamentary Secretary and hence the Commission considers should not be reviewed by the ADRP.

In any case, the Commission notes that Milena may apply for a review of the anti-dumping measures (no sooner than 12 months after publication of the Parliamentary Secretary's decision) if it considers that the variable factors (including export price, which may be influenced by exchange rates) have changed.

If the ADRP requires further information on this ground, the Commission would be happy to provide this.

Ground 7 - Currency exchange rates not fully factored in (method of setting measures)

This ground is a new argument that was not available to be considered by the Commissioner in making his report to the Parliamentary Secretary and hence the Commission considers should not be reviewed by the ADRP.

If the ADRP requires further information on this ground, the Commission would be happy to provide this.

3.5. Relevant information to grounds of review

Ground 1 - Inadequate notification and communication with interested parties

Milena did not submit this point formally as a submission to the investigation. Records of correspondence in relation to this matter have been included by Milena in its application.

Ground 2 - Unwillingness to review during investigation

Milena did not submit this complaint formally as a submission to the Commission.

Records of correspondence in relation to this matter have been included by Milena in its application.

Ground 3 - Decision to include lipped laundry tubs as like goods was not correct

See discussion of Everhard's application in Section 2 above.

Ground 4 - Decision to exclude stand-alone laundry units (either assembled or kits) was not correct

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Submission	Seima Pty Ltd	48
Submission	Shriro Australia Pty Ltd	27
Submission	Shriro Australia Pty Ltd	73
Submission	Milena	85
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Issues paper – the goods and like goods	Commission	78

Ground 5 - Unnecessarily punitive levy placed on uncooperative and other exporters

Nil – this was not raised during the investigation and has not been raised by Milena in correspondence with the Commission.

Ground 6 - Currency exchange rates not fully factored in investigations (recommendations)

Nil – this was not raised during the investigation and has not been raised by Milena in correspondence with the Commission.

Ground 7 - Currency exchange rates not fully factored in (method of setting measures)

Nil – this was not raised during the investigation and has not been raised by Milena in correspondence with the Commission.