



Australian Government  
Anti-Dumping Review Panel

# Application for review of a Ministerial decision

## *Customs Act 1901 s 269ZZE*

This is the approved<sup>1</sup> form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 2 March 2016 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party<sup>2</sup> may lodge an application for review to the ADRP of a review of a ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

### **Time**

Applications must be made within 30 days after public notice of the reviewable decision is first published.

### **Conferences**

You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel gives public notice of its intention to conduct a review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after public notice of an intention to conduct a review is given on the ADRP website. Conferences are held between 10.00am and 4.00pm (AEST) on Tuesdays or Thursdays. You will be given five (5) business days' notice of the conference date and time. See the ADRP website for more information.

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<sup>1</sup> By the Acting Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

<sup>2</sup> As defined in section 269ZX *Customs Act 1901*.

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### **Further application information**

You or your representative may be asked by the Panel Member to provide further information to the Panel Member in relation to your answers provided to questions 10, 11 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

### **Withdrawal**

You may withdraw your application at any time, by following the withdrawal process set out on the ADRP website.

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email [adrp@industry.gov.au](mailto:adrp@industry.gov.au).

**PART A: APPLICANT INFORMATION**

**1. Applicant's details**

Applicant's name: Milena Australia Pty Ltd

Address: PO Box 457, Coolum, QLD 4573

Type of entity (trade union, corporation, government etc.): Corporation

**2. Contact person for applicant**

Full name: Robert van der Riet

Position: Managing Director

Email address: robert@milena.com.au

Telephone number: 07-5351-1305

**3. Set out the basis on which the applicant considers it is an interested party**

We are the party who initiated the Review (Report 352) and are the Australian party affected by the decision.

**4. Is the applicant represented?**

No.

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

***\*It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.\****

**PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES**

**5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:**

☐ Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

☐ Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

☐ Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

☐ Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

☐ Subsection 269TL(1) – decision of the Minister not to publish duty notice

☒ Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

☐ Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

☐ Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

**6. Provide a full description of the goods which were the subject of the reviewable decision**

Deep Drawn Stainless Steel sinks exported by Shengzhou Chunyi Electrical Appliances Co. Ltd. From the Peoples Republic of China and imported by Milena.

**7. Provide the tariff classifications/statistical codes of the imported goods**

7324.10.00 (statistical code 52).

**8. Provide the Anti-Dumping Notice (ADN) number of the reviewable decision**

ANTI-DUMPING NOTICE NO. 2016/107.

**9. Provide the date the notice of the reviewable decision was published**

21 November 2016.

***\*Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application\****

## PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the grounds that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so: ☐

### 10. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision.

We believe that:

- The Report (352) that was used to make the decision does not appear to accurately and fairly determine the "Normal Value" of the goods and uses a constructed value which Milena believes is erroneous (REP 532 – 5.3).
  - Milena has approached the ADC for copies of the Confidential Annexures but has to date not received these even after supplying permission to view all confidential information from the Chinese exporter (Shengzhou Chunyi Electrical Appliances Co. Ltd. - SCEA).
    - Milena has attempted to postpone this Appeal till it has been able to view the Annexures but its requests for an extension were refused by the AD Review Panel.
  - Milena believes that the methodology for calculating Profit (REP 352 – 5.3.4) is likely to have been erroneous due to insufficient consideration given to the commercial likeness of other SCEA goods to the goods in question.
    - The potential for this to be an issue was acknowledged by the ADC in REP 352 - 4.4. & 5.3.1.
  - Milena believes that the Duties set for other Exporters are a clear indication that the new Dumping Margin of 34.13% is excessive.
    - Most others are between 5% and 10%.
- Finding that the cost of 304 grade stainless steel cold-rolled coil (304 SS CRC), incurred by Chinese exporters did not reasonably reflect competitive market costs (REP352 - 5.3.1. Cost of production).
  - The original data used to prove dumping was MEPS - unfortunately we are not allowed to show current data as MEPS refuses to allow any of their data to be used in any matter relating to the Australian Government (apparently has something to do with a bad experience they have had).
  - However there is nothing stopping anyone from checking the historic data for themselves on the MEPS website.
    - <http://www.meps.co.uk/Stainless%20Price-eu.htm>
    - <http://www.meps.co.uk/Stainless%20Price-N.Amer.htm>
    - <http://www.meps.co.uk/Stainless%20price-asia.htm>

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- The data proves that the Asian price WAS roughly 15% cheaper at the start of 2015 BUT by the latter part of 2015 the US price was cheaper and by early 2016 even the EU price was cheaper.
- Continuing to use North American & European prices as benchmarks when pricing for Australia and markets more closely related to us are available – in fact even prices paid by Tasman are available (REP352 - 5.3.1. Cost of production).
  - We have supplied the Anti-Dumping Commission with data from local Australian Suppliers – the Confidential version of our Submission dated 22 September 2016 has been supplied with this application (Non-Confidential Version is available at <http://www.adcommission.gov.au/cases/Pages/CurrentCases/EPR-352.aspx>).
- The finding at REP 352 - 6.2.2. in regards Countervailable Subsidies for companies that operate at small profit.
  - This fails to consider that Australia has a similar system in place with a small company now only having to pay 28.5% tax while a bigger company has to pay roughly 35% tax (30% + Payroll tax).

### **11. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 10.**

Milena believes that the correct decision is that the goods exported by SCEA have their "Normal Value" reassessed – with the reassessment noting their commercial difference to other products sold by SCEA. Milena believes this will lead to a substantial reduction in Normal Value and as such the Dumping Margin will be reduced or possibly found to be zero.

Milena further believes that if the other points raised are assessed it will become clear that SCEA and the Chinese government are not guilty of Dumping Stainless Steel or unfairly subsidizing small profit businesses and in fact the entire premise for this Dumping Duty has been proven to be flawed.


### **12. Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision.**

Currently the Ministers decision is that goods imported from SCEA are no longer subject to an effective 52.6% Dumping Duty but rather an effective 34.33% Dumping Duty. Milena believes if all the information is considered this will be reduced even further and in fact may even be zero.

**PART D: DECLARATION**

The applicant/the applicant's authorised representative [*delete inapplicable*] declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected;
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature:  .....

Name: Robert van der Riet

Position: Managing Director

Organisation: Milena Australia Pty. Ltd.

Date: 16 / 12 / 2016

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**PART E: AUTHORISED REPRESENTATIVE**

*This section must only be completed if you answered yes to question 4.*

**Provide details of the applicant's authorised representative**

Full name of representative:

Organisation:

Address:

Email address:

Telephone number:

**Representative's authority to act**

***\*A separate letter of authority may be attached in lieu of the applicant signing this section\****

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:.....

(Applicant's authorised officer)

Name:

Position:

Organisation

Date:     /     /



22 September 2016



**Submission in respect of Anti-Dumping Commission Statement of Essential Facts No. 352**

**Review of Anti-Dumping Measures Applying to Deep Drawn Stainless Steel Sinks Exported to Australia  
from The People's Republic of China by Shengzhou Chunyi Electrical Appliances Co. Ltd.**

Dear Sir or Madam

We hereby request that you please consider the attached facts/considerations and incorporate them into your findings.

1. LIKE GOODS (SEF - 3 THE GOODS).....	2
2. HISTORIC BASIS FOR DUMPING DUTY NO LONGER RELEVANT (SEF - 5.3 NORMAL VALUE) .....	3
3. NORMAL VALUE & COMPARATIVE PRICING (SEF - 5.3 NORMAL VALUE).....	3
4. COUNTERVAILING (SEF - 6) .....	3
5. PROTECTION OF STAINLESS STEEL HAS NO BASIS .....	3
6. NATIONAL INTEREST .....	4
7. EXEMPTION .....	4
8. CONFIDENTIAL ANNEXURE 1.....	5

Yours sincerely,

ROBERT VAN DER RIET  
Managing Director

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**Milena Australia Pty Ltd**

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## 1. LIKE GOODS (SEF - 3 THE GOODS)

### A. Tasman ONLY has 3 laundry tubs.

1. 70L Inset
  - a) We don't import these at all.
2. 45L Inset
  - a) We import these and are happy to pay Duties (if due).
  - b) In Period 1,2 & 3 (18 months) we only brought in [REDACTED] – that's less than 0.33%.
  - c) There are plenty of ridiculously cheap ones available in the market as almost every plumbing group imports them directly.
  - d) We only get the limited sales we do because we offer a Lid (which we make here) free with ours – so is it still "like" goods.
3. 45L Undermount
  - a) We don't import these at all.

### B. We sell 32L and 35L Inset models but Tasman has chosen not to manufacture in this market segment and as such these sizes should not be classified as "like".

### C. Lipped Tub are NOT like product and somehow we have to communicate this.

1. One CANNOT use a Lipped Tub in place of an Inset or Undermount Tub (the only options Tasman make).
2. The fact that the fully imported Lipped Tubs when brought in with a Chinese made cabinet are exempt must surely "prove" this fact.
3. How on earth we got to the stage where the product on the left below pays NOTHING while our locally made cabinets on the right have to pay beggars belief.



## 2. HISTORIC BASIS FOR DUMPING DUTY NO LONGER RELEVANT (SEF - 5.3 NORMAL VALUE)

- A. The data originally used to prove dumping was the MEPS data.
  - 1. Unfortunately we are not allowed to show current data as MEPS refuses to allow any of their data to be used in any matter relating to the Australian Government (apparently has something to do with a bad experience they have had).
  - 2. However there is nothing stopping anyone from checking the historic data for themselves on the MEPS website.
    - a) <http://www.meps.co.uk/Stainless%20Price-eu.htm>
    - b) <http://www.meps.co.uk/Stainless%20Price-N.Amer.htm>
    - c) <http://www.meps.co.uk/Stainless%20price-asia.htm>
- B. The data proves that the Asian price WAS roughly 15% cheaper at the start of 2015 BUT by the latter part of 2015 the US price was cheaper and by early 2016 even the EU price was cheaper.

## 3. NORMAL VALUE & COMPARATIVE PRICING (SEF - 5.3 NORMAL VALUE)

- A. We believe that the attached quote and historic pricing (Confidential Annexure 1) from a well known and reputable local Australian supplier clearly demonstrates that the price SCEA has paid for Stainless Steel is indeed fair and normal value.
  - 1. This is the price being paid by Australian companies using Stainless Steel and is thus more representative than any data set which is based on EU and US values.
  - 2. Based on this pricing plus with a reasonable allowance for CIF and Markup it is clear that the claimed variance does not exist.

## 4. COUNTERVAILING (SEF - 6)

- A. The main issue seems to be that SCEA as a small profit company gets to pay less tax.
  - 1. In Australia a small company only has to pay 28.5% tax while a bigger company has to pay roughly 35% tax (30% + Payroll tax).
  - 2. Also the fact that we found a business which has a competitive advantage is kudos to us and what competition (capitalism) is supposed to encourage.

## 5. PROTECTION OF STAINLESS STEEL HAS NO BASIS

- A. There are sadly NO Stainless Steel mills in Australia – so the price should not be protected unless the availability to Australian goods manufacturers is restricted.
- B. These so called “subsidized” Chinese Stainless Steel products are available on the open market and there is and was nothing stopping Tasman buying the same stock at the same “subsidized” prices.
- C. Tasman should be asked to explain why they aren’t simply buying the same “subsidized” Stainless Steel stock from the Chinese suppliers?

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- D. If they aren't because they believe their suppliers offer a "higher quality" or something similar that is a commercial CHOICE and should not be protected by onerous laws.

**6. NATIONAL INTEREST**

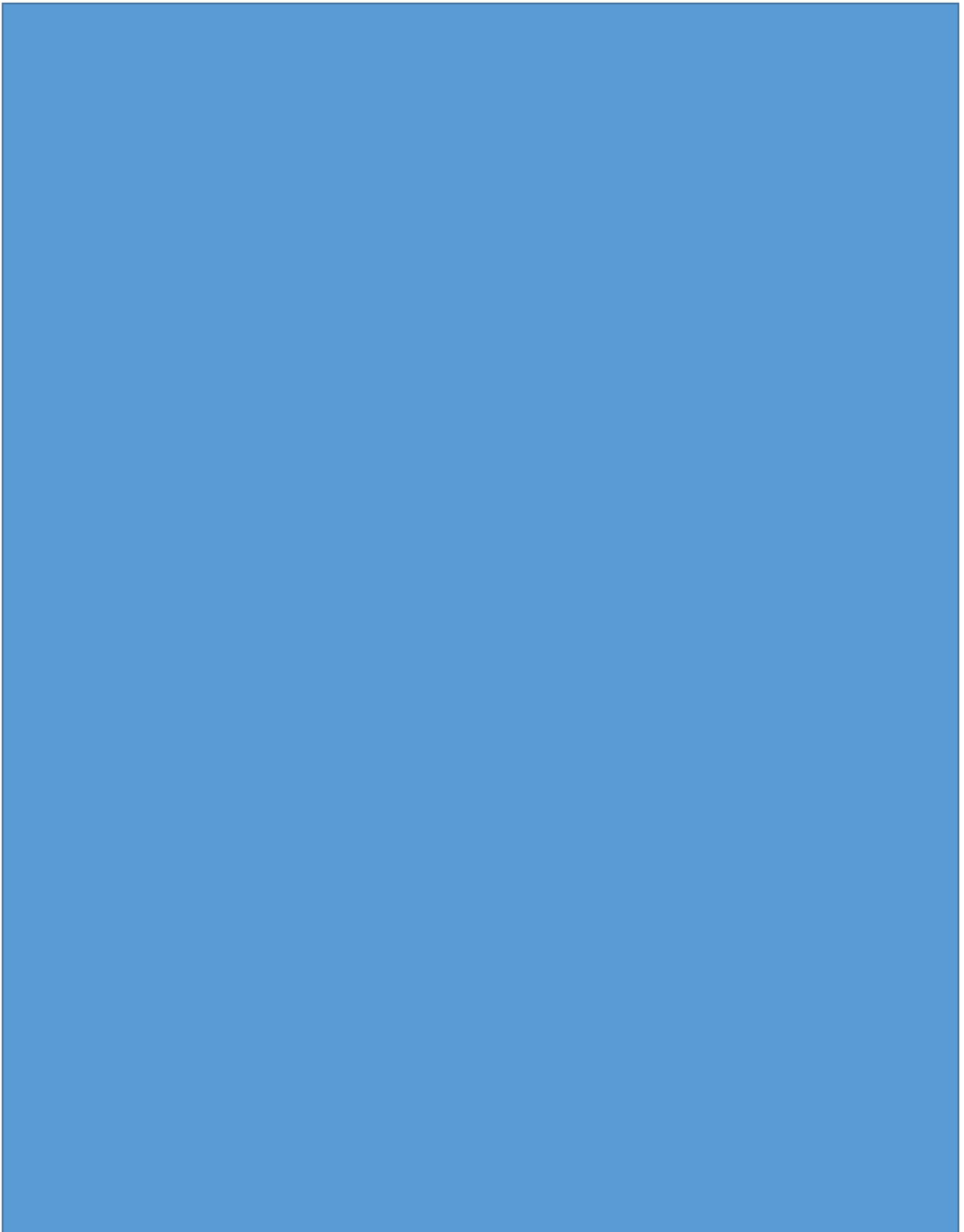
- A. Surely it is not in the Interests of Australia that this Dumping Legislation encourages and in fact forces us as a manufacturer to move production of our cabinets to China?
  - 1. If we stop bringing one component here and rather move ALL manufacturing to China and bring back the units fully-assembled or in a kit we will liable for NO Duty.
- B. It should be highlighted that the minerals used by the Chinese to manufacture the "subsidized" Stainless Steel have been sourced from Australian mines so the Chinese government is in fact helping and not hindering Australia??

**7. EXEMPTION**

- A. It seems our only hope may be an Exemption application but here we note that in the ACT it says:
  - 1. *(8A) An instrument of exemption under subsection (7) takes effect on the day specified in the instrument. That day may be earlier or later than the day the instrument is made but, if the exemption is given because of an application for exemption, must not be earlier than the day the application is made.*
- B. So it appears if we APPLY for an Exemption then the payments to date won't be able to be corrected BUT if we don't apply and the Minister "realizes" the issues and chooses to fix it then it could be backdated to the start.

8. CONFIDENTIAL ANNEXURE 1

A. Email - Quote and Historic Pricing from [REDACTED] (email)







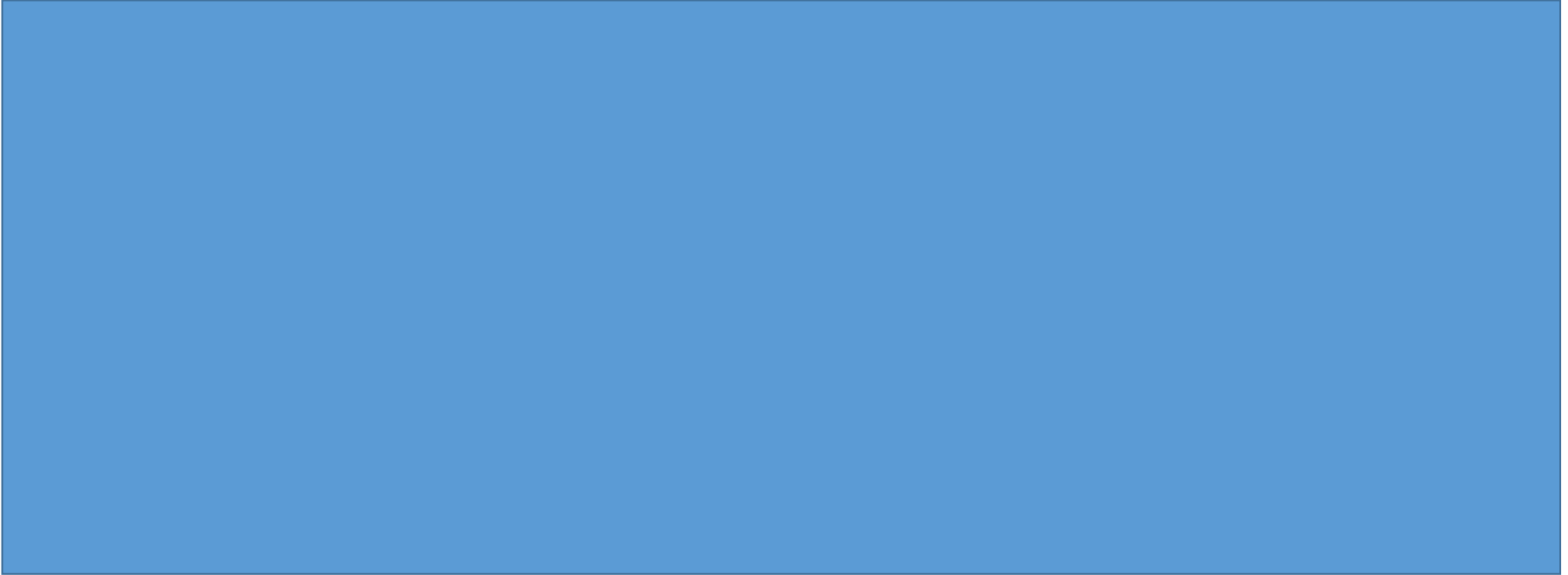
B. Analysis of Historic Pricing from [REDACTED]:





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C. SCEA Stainless Steel Purchases Data:



D. Comparisons of [REDACTED] & SCEA Pricing:

