

INVESTIGATION INTO DEEP DRAWN STAINLESS STEEL SINKS FROM THE PEOPLE'S REPUBLIC OF CHINA

ANTI-DUMPING REVIEW PANEL REVIEW

INTERESTED PART REVIEW SUBMISSION

Tasman Sinkware represents the Australian Industry in the investigation into Deep Drawn Stainless Steel Sinks from the People's Republic of China and provides this document as a submission to Anti-Dumping Review Panel for consideration in the review process. Both Everhard and Milena have lodged applications for a review on a range of matters. The Industry wishes to make a submission on the following matters:

1. That the Parliamentary Secretary has not erred in ruling that stainless steel lipped laundry bowls classified as like goods; and
2. In contrast that the Parliamentary Secretary has erred in ruling that stand alone laundry units are not considered like goods.

Stainless Steel Lipped Laundry Bowls

The only point of consideration is whether the goods are either like goods or directly competitive goods. While the Australian Industry does accept that there are engineered differences between the drop in and lipped laundry tub products it proposes that those points of difference do not differentiate the primary application/use of both products – the collection of water and distribution of waste water. Section 269T of the Act definition of “like goods” as:

...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

Based on this definition and the point above there is not alternative ruling other than that the lipped laundry bowl is a like good, in that it is not alike in all aspects (due to the presence of the lip) but does have primary characteristics that resemble goods produced by the Australian Industry.

Stand Alone Laundry Units

Firstly, the Australian Industry would like to re-submit the points which were raised in Submission #95 which is part of the public record for the AD case to ensure these are given due consideration.

Section 3 The goods and like goods

The Australian industry supports the view of the Commission in their assessment that Individually Imported Lipped Laundry Tubs (IILLT) **are** the goods and therefore **are** subject to anti-dumping measures. Therefore, in assessing the status of the Free Standing Laundry Unit (FSLU) the key point of difference under determination is the role of the so-called ‘cabinet’

itself. It is the opinion of the Australian industry that the Commission has not given the appropriate level of consideration to some key points.

The underlying assessment and reasoning of the Commission to exclude the FSLU seems to be based on the incorrect statement that the 'laundry cabinet' is not an accessory. The Commission has concluded that the 'cabinet' makes the ILLT "usable at all" as opposed to making the "product more useful" (p. 106) and is "an essential element to enable the product to be functional" (p. 106). Additionally, the Commission has deemed the cabinet to be "considered essential elements" (p. 106) and that "these products are of no (or very limited) use without these cabinets" (p. 106).

The Australian Industry refutes the position of the Commission by raising the following points:

- All pressed bowl sinks/tubs (regardless of kitchen or laundry application) require installation into a form of cabinetry, be it laminate, marble, stone, wood or pressed metal. All pressed bowl sinks/tubs require this as "an essential element to enable the product to be functional" (p. 106), this statement therefore applies equally to all pressed bowl (sink & laundry) products and is not limited to FSLU's. So to apply this assessment independently to the sub-category of the FSLU is an incorrect assessment, and an error of fact, being applied by the Commission.
- The provision of a FSLU is simply a more advanced stage of installation to which all pressed bowl (sink & laundry) products must achieve. Therefore, to state that "these products are of no (or very limited) use without these cabinets" (p. 106) is correct, but the statement again applies equally to all pressed bowl (sink & laundry) products and is not isolated to FSLU's only. To argue that the FSLU is only saleable due to the inclusion of the cabinet is to equally argue that every other sink/tub (which is the majority of the market) is not saleable as it does not yet include any form of cabinetry.
- The statement that the cabinet cannot be an accessory because it provides a level of functionality that makes the product "usable at all" is also incorrect. If the Commission were to apply this definition across the sink/tub category and not limit it solely to the sub category of the FSLU cabinet then the following scenarios would also hold true:
 - Taps would be excluded as an accessory of the sink/tub as this water delivery functionality makes the product "usable at all" as opposed to "more useful". It would be impossible to sell a sink/tub where the consumer has to be convinced to bucket in their water due to the absence of any taps; and
 - Basket wastes (plugs) would also be excluded as an accessory of the sink/tub as this functionality to hold the water in the bowl also makes the product "usable at all" as opposed to "more useful". Again, consumer would not accept a product where the water was unable to be retained in the bowl and simply flowed directly away.

While the stance accepted by the Commission may apply to some accessories such as drainer baskets, colanders and chopping boards it is not a definitive position that can be applied to all accessories. Therefore, for the Commission to argue levels of functionality between strainers, chopping boards, basket wastes, taps or even cabinets to determine whether they meet the definition of an accessory is intrinsically flawed and a direct contradiction to existing items (as indicated above

with taps and plugs) which are already accepted by the Commission within the existing definition of accessories but also make the product “usable” as opposed to “useful”.

- The Commission has noted the FSLU cabinet is an “essential element” as opposed to an accessory which therefore excludes it from the definition of the goods. It is worthy to note that the cabinet itself is not a product which is available for separate purchase without the inclusion of a tub. Submission 085 on the public record from the importer, Milena Australia, clearly supports this position:

“To argue that a free-standing laundry unit is a cabinet with a tub more so than a tub with a cabinet is not correct. A simple proof of this is that the cabinets in question are not on sale without the tub.”

Such an arrangement clearly supports the position that the cabinet is “a thing which can be added to something else” (*Oxford English Dictionary* cited at p. 106) and not visa-versa. Therefore, the inclusion and functionality of the cabinet in the FSLU is clearly secondary to the primary purpose and function which is that of a pressed tub, this again indicates that the cabinet is an added accessory for the tub.

In addition to the points re-listed above the Australian Industry would also like to reinforce that these points were not given full consideration by the Parliamentary Secretary. This is due to the fact that part of the information provided above was excluded from the Final Report prepared by the Commission, specifically SUBMISSIONS RECEIVED BY THE COMMISSION – POST-SEF (Page 108) excludes any reference to the last dot point which shows the cabinet is clearly an accessory as it is not able to be separately purchased. The absence of an independent sales process clearly shows that the lipped laundry tub not the cabinet is the primary application and this point was omitted from the Parliamentary Secretary for consideration in the final report.

In conclusion to the points above, the Australian Industry therefore submits that the addition of the cabinet does not exclude the stand alone laundry unit from being considered like goods. The cabinet is considered an accessory as it is added to the laundry tub and has no commercial value as an independent item as it is not sold in isolation for storage purposes. The complete unit still meets the legal definition of like goods in that it is not alike in all aspects (due to the presence of the lip – the cabinet is part of the definition as an accessory) but does have primary characteristics that resemble goods produced by the Australian Industry as its primary application and purpose is still that of a laundry trough to capture water and distribute the waste water via the plug outlet. Additionally, given the fact that the stand alone unit only has one commercially promoted application as a laundry trough unit it is also a directly competing product to the drop in laundry trough produced by the Australian Industry.

In the ADC's Response to Invitation to Comment (PDF 207KB)- 3 June 2015 as part of the review the ADC submits the following point to support its ruling “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 subject to this investigation or the resulting measures.” The Australian Industry would submit that, as per the argument provided above, the level of functionality does not affect the inclusion of an item as an accessory within the definition of like goods. This position has been accepted by the ADC as they clearly accept the addition of taps and waste outlet as accessories within the definition of like goods. Yet the ADC seem to draw some unknown distinction at a cabinet which they

deem as more “essential to the product’s ability to function” as a laundry tub that the actual tap to provide the water for collection and the waste outlet to distribute the waste water to the household plumbing. This distinction seems to have no basis of support by the ADC in any of their responses as it is made more as a statement of fact with no underlying supporting argument either legally or practically to enforce this position. On the basis that the cabinet is indeed an accessory then the consideration simply becomes is the stand alone laundry unit meeting the definition of a like good. To this point the Australian Industry submits (as with the lipped laundry tub) that it is primarily of the same characteristics and is a directly competing product so is a like good that needs to be included within the scope of the anti-dumping ruling.

The Australian Industry therefore submits that the exclusion of the stand alone laundry unit from the AD case is an error in the current ruling which needs to be reversed as part of this review process.