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Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

CONSIDERATION REPORT NO. 461

**CONSIDERATION OF AN APPLICATION FOR
A REVIEW OF ANTI-DUMPING MEASURES**

**DEEP DRAWN STAINLESS STEEL SINKS
EXPORTED TO AUSTRALIA FROM
THE PEOPLE'S REPUBLIC OF CHINA
BY**

GUANGDONG YINGAO KITCHEN UTENSILS CO., LTD

February 2018

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ABBREVIATIONS

Abbreviation	Full title
the Act	the <i>Customs Act 1901</i>
China	the People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
304 SS CRC	304 stainless steel cold rolled coil
the goods	the goods the subject of the application
MEPS	MEPS (International) Ltd
REP 238	Anti-Dumping Commission Report No. 238
Yingao, or the applicant	Guangdong Yingao Kitchen Utensils Co., Ltd

1 SUMMARY AND RECOMMENDATION

This report outlines the Anti-Dumping Commission's (the Commission's) consideration of an application lodged by Guangdong Yinggao Kitchen Utensils Co., Ltd (Yinggao) (the applicant) for a review in respect of the anti-dumping measures (in the form of a dumping duty notice and a countervailing duty notice) applying to deep drawn stainless steel sinks¹ (the goods) exported to Australia from the People's Republic of China (China).

The applicant considers that it is appropriate to review the anti-dumping measures, as they affect the exporter Yinggao, because one or more of the variable factors relevant to the taking of the anti-dumping measures have changed. The variable factors that have allegedly changed are the normal value and export price (relevant to the dumping duty notice) and the amount of countervailable subsidy received in respect of the goods (relevant to the countervailing duty notice).

Yinggao did not respond to the exporter questionnaire in the original investigation. As such, Yinggao was considered a non-cooperating exporter and is subject to the current dumping and countervailing measures for 'uncooperative and all other' exporters, as prescribed in Anti-Dumping Notice No. 2015/41.

1.1 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)² sets out, among other things, the procedures to be followed by the Commissioner of the Anti-Dumping Commission (the Commissioner) in dealing with an application for a review of anti-dumping measures.

Division 5 empowers the Commissioner to reject or not reject an application for review of anti-dumping measures. If the Commissioner does not reject the application, he is required to publish a notice indicating that it is proposed to review the measures covered by the application.

1.2 Findings and conclusions

Based on the findings outlined in this report the Commission is satisfied:

- the application complies with subsections 269ZB(1) and (2) of the Act; and
- that there appear to be reasonable grounds for asserting the variable factors relevant to the taking of anti-dumping measures have changed.

1.3 Recommendation

Accordingly the Commission recommends that the Commissioner not reject the application for the reasons outlined in Section 3 of this report, and that he initiate a review of the anti-dumping measures as they affect the exporter Yinggao.

¹ Refer to the full description of the goods in Section 2.3 of this report.

² All legislative references in this report are to the Customs Act 1901, unless otherwise specified.

2 BACKGROUND

2.1 Existing measures

Since 2015, the Commission has conducted investigations, reviews and inquiries relating to deep drawn stainless steel sinks. Full details can be found on the Commission’s electronic public record at www.adcommission.gov.au. The matters relevant to the application are summarised below:

18 March 2014	The Commission initiated an investigation into the alleged dumping and subsidisation of deep drawn stainless steel sinks exported to Australia from China following an application by Tasman Sinkware Pty Ltd.
26 March 2015	The then Parliamentary Secretary to the then Minister for Industry and Science published a dumping duty notice and a countervailing duty notice applying to deep drawn stainless steel sinks exported to Australia from China – Anti-Dumping Commission Report No. 238 refers (REP 238).

2.2 The current application

On 23 January 2018, the Commission received an application for a review of the anti-dumping measures, as they apply to deep drawn stainless steel sinks exported to Australia from China by Yingao. In its application, Yingao claims that certain variable factors relevant to the taking of the anti-dumping measures (being normal value, export price and the amount of countervailable subsidy received), as they apply to Yingao, have changed.

As outlined in Section 1, Yingao is currently subject to the dumping and countervailing measures for ‘uncooperative and all other’ exporters. These variable factors were established in REP 238, and are based on the investigation period 1 January to 31 December 2013.

The application is not precluded by subsection 269ZA(2), which requires that an application for review of anti-dumping measures must not be made earlier than 12 months after the publication of the notice, or the publication of a notice declaring the outcome of the last review of the notice.

Pursuant to subsection 269ZC(1), the Commissioner must, within 20 days after receiving an application, examine the application and decide whether to reject the application.

This application was received by the Commission on 23 January 2018. This is taken to be the date on which the application was lodged for the purpose of consideration. As such, the decision whether to reject the application must be made by no later than 12 February 2018.

If the Commissioner is not satisfied, having regard to the application and to any other information that the Commissioner considers relevant, of one or more matters referred to in subsection 269ZC(2), the Commissioner must reject the application.

2.3 The goods subject to the anti-dumping measures

The goods to which the current anti-dumping measures apply (the goods) are:

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.

stainless steel sinks with multiple deep drawn bowls that are joined through a welding operation to form one unit; and

deep drawn stainless steel sinks whether or not they are sold in conjunction with accessories such as mounting clips, fasteners, seals, sound-deadening pads, faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

The following descriptions are excluded from measures, exemption type "GOODS" applies:

stainless steel sinks with fabricated bowls

2.3.1 Tariff classification of the goods

The goods are classified to tariff subheading 7324.10.00 (statistical code 52), in Schedule 3 of the *Customs Tariff Act 1995*.

3 CONSIDERATION OF THE APPLICATION

3.1 Legislative background

Subsection 269ZB(1) requires that an application be in writing, be in a form approved by the Commissioner for the purposes of section 269ZB, contain such information as the form requires, be signed in the manner indicated by the form and be lodged in a manner approved under section 269SMS.

Without otherwise limiting the matters that can be required by the form to be included, subsection 269ZB(2) provides that an application must include:

- a description of the kind of goods to which the measures the subject of the application relate; and
- a description of the measures the subject of the application; and
- if the application is based on a change in variable factors, a statement of the opinion of the applicant concerning:
 - the variable factors relevant to the taking of the measures that have changed; and
 - the amount by which each such factor has changed; and
 - the information that establishes that amount; and
- if the application is based on circumstances that in the applicant's view indicate that anti-dumping measures are no longer warranted, evidence (in accordance with the form) of the circumstances.

Subsection 269ZC(2) specifies the matters that the Commissioner must consider in making a decision whether to reject an application. These matters are:

- that the application complies with section 269ZB; and
- that there appear to be reasonable grounds for asserting either, or both, of the following:
 - that the variable factors relevant to the taking of anti-dumping measures have changed;
 - that the anti-dumping measures are no longer warranted.

3.2 Assessment of the application – compliance with section 269ZB

When considering the requirements of subsections 269ZB(1) and (2), the Commission notes that the application was submitted on 13 February 2018:

- is in writing;
- is in the approved form (*Form B602 – application for a review of measures*), and contains such information as the form requires (including evidence to support the amount by which the different variable factors, where applicable, have changed since anti-dumping measures were last imposed, and information on the causes of the change and whether those causes are likely to persist);
- is signed in the manner required by the form;
- was lodged in a manner approved under section 269SMS, being by email to the Commission's nominated email address (as nominated in the Commissioner's instrument made under subsection 269SMS(2));

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- provides a description of the kind of goods to which the anti-dumping measures the subject of the application relate;
- provides a description of the anti-dumping measures the subject of the application; and
- includes a statement of the opinion of the applicant concerning the variable factors relevant to the taking of the measures that have changed, the amount by which each factor has changed, and the information that establishes that amount.

The Commission is satisfied that the applicant has satisfied the requirements of subsections 269ZB(1) and (2).

3.3 Variable factors

Further to Section 3.2, the Commission considers that to comply with section 269ZB the applicant must provide information to establish that, in the applicant's opinion, one or more of the variable factors have changed.

In its application, Yingao claims that the variable factors of normal value, export price and amount of countervailable subsidy applicable to the goods exported to Australia from China have changed.

As outlined in Section 1, Yingao is currently subject to the dumping and countervailing measures for 'uncooperative and all other' exporters. As such, Yingao is subject to a combined fixed interim dumping duty and interim countervailing duty rate of 52.6%.

3.3.1 Applicant's claims

Ascertained normal value

In Investigation No. 238, the normal value for 'uncooperative and all other' exporters was established in accordance with subsection 269TAC(6), using highest weighted average normal value for the investigation period from selected exporters.

In calculating the normal value, the original investigation found that the costs of 304 stainless steel cold rolled coil (304 SS CRC) incurred by Chinese exporters of the goods did not reasonably reflect competitive market costs for that input. Therefore, a benchmark price of an average price for 304 SS CRC using MEPS (International) Ltd (MEPS) North America and European prices (excluding Asia), to replace the stainless steel costs, was used.

Evidence to show that the average price of MEPS North American and European prices for the most recent available period (July 2016 to June 2017) is lower than the original investigation period has been provided by the applicant (**Confidential Appendix 1** refers). The applicant claims that the unit price per tonne has dropped by approximately 15.3% when comparing the latest MEPS data to the original investigation period.

Ascertained export price

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In Investigation No. 238, the export price for 'uncooperative and all other exporters' was established in accordance with subsection 269TAB(3)³ using the lowest weighted average export price for the original investigation period from selected exporters (as outlined in REP 238). Yingao claims that this does not reflect the actual export price of Yingao.

Yingao's application states that it did not make any exports of the goods to Australia in recent years, due to the high anti-dumping measures applicable to it. However, Yingao has provided quotes from recent discussions it has had with a potential Australian importer (**Confidential Appendix 1** refers). Yingao has been unable to show the potential difference in its calculated export price to that calculated in the original investigation, due to that information being confidential.

Further, Yingao has provided exchange rate data for the Australian Dollar, Renminbi, and United States Dollar, as evidence that there has been significant changes in exchange rates between the original investigation period, and the more recent period (July 2016 to June 2017) (**Confidential Appendix 1** refers). It claims that these fluctuations in exchange rates would have a significant impact on the export price.

Ascertained countervailable subsidy

In its application, Yingao claims that the amount of countervailable subsidy has changed.

Yingao claims that it has not received any income tax benefit, and therefore countervailable programs 7, 8 and 24 do not apply to it. Further it claims that it has not received a benefit under any of the grant programs listed in the original investigation (2 to 6, and 9 to 23).

Further, Yingao claims that it did not purchase stainless steel from state invested enterprise suppliers or producers, only from privately owned suppliers and producers that were foreign owned and have no relationship with the government. As a result, program 1 (raw materials provided by the Government at less than fair market value), would not apply.

The Commission considers that Yingao has provided sufficient information to establish the amount by which the countervailable subsidy has changed.

The Commission's assessment

The Commission considers that, on the basis of the information available, there appears to be reasonable grounds for asserting that:

- the ascertained normal value applicable to Yingao has changed, due to the movement in 304 SS CRC benchmark prices, which formed the basis of the normal value established in the original investigation;

³ The Commission notes that, on 30 October 2017, the Customs Amendment (Anti-Dumping Measures) Bill 2017 received royal assent and new subsections 269TAB(2A) to (2G) were inserted into the Act. These provisions provide for alternative methodologies to determine an export price during a review of measures for those exporters who have not exported goods, or exported low volumes of goods to Australia.

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- export prices have changed since last ascertained; and the amount of countervailable subsidy received has changed.

3.4 Assessment of application – compliance with section 269ZC

Based on the Commission's analysis in Section 3.3, there appear to be reasonable grounds in respect of the application for asserting, under subsection 269ZC(2)(b)(i), that all the variable factors relevant to the taking of anti-dumping measures have changed, being export price, normal value and the amount of countervailable subsidy received.

Based on this assessment, the Commission recommends that the Commissioner not reject the application pursuant to subsection 269ZC(1) of the Act as it is satisfied of the matters referred to in subsection 269ZC(2).

3.5 Conclusions and recommendations

The Commission has considered the application made by Yingao in accordance with sections 269ZB and 269ZC of the Act. The Commission is satisfied, on the basis of the information provided in the application that:

- the application complies with section 269ZB; and
- there appear to be reasonable grounds for asserting that at least one of the variable factors relevant to the taking of the measures have changed.

The Commission recommends that the Commissioner:

- not reject the application for a review of the variable factors and initiate a review into the current anti-dumping measures (being the dumping duty notice and countervailing duty notice) in so far as it affects the goods exported to Australia from China by Yingao; and
- that the period from 1 January to 31 December 2017 be examined for the purpose of reviewing the variable factors.