



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

**Anti-Dumping
Commission**

Exemption Inquiry Report: EX0047

Deep Drawn Stainless Steel Sinks Exported to Australia from the People's Republic of China

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Table of contents

Abbreviations	3
1. Summary and recommendations	4
1.1 Recommendations	4
1.2 Authority to make the decision	4
1.3 Initiation of inquiry	4
1.4 Findings and conclusions	5
2. Background to the measures	6
2.1 Original investigation	6
2.2 Review of measures in Report 352	6
2.3 The goods subject to measures	6
2.4 Tariff classification	7
3. Exemption inquiry	8
3.1 Exemption inquiry process	8
3.2 Goods subject of the exemption inquiry	8
3.3 Claims made by Milena	9
3.4 Legislative requirements for an exemption	9
3.5 Definition of 'like or directly competitive goods'	9
3.6 Definition of 'custom and usage of trade'	10
4. Australian industry's offer for sale of 'like' or 'directly competitive' goods	12
5. The Commission's assessment – like or directly competitive goods offered for sale in Australia	13
5.1 Findings	13
5.2 Like or directly competitive goods offered for sale in Australia	13
5.3 Conclusions	16
6. To all purchasers on equal terms under like conditions having regard to the custom and usage of trade	17
7. The Commission's assessment - to all purchasers on equal terms under like conditions having regard to the custom and usage of trade	18
7.1 Finding	18
7.2 To purchasers on equal terms under like conditions having regard to the custom and usage of trade	18
7.3 Conclusion	18
8. Recommendations	19
8.1 Effective date of exemption	19
9. Attachments	20

Abbreviations

Abbreviations	Full reference
ACBPS	Australian Customs and Border Protection Service
the Act	the <i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
China	the People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Dumping Duty Act	the <i>Customs Tariff (Anti-Dumping) Act 1975</i>
the duties	interim dumping duty and dumping duty and interim countervailing duty and countervailing duty
exemption goods	the goods subject of the inquiry as described in section 3.2
Milena	Milena Australia Pty Ltd
Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
REP 238	<i>Anti-Dumping Commission Report No. 238</i>
REP 352	<i>Anti-Dumping Commission Report No. 352</i>
SCEA	Shengzhou Chunyi Electrical Appliances Co. Ltd
Tariff Act	<i>Customs Tariff Act 1995</i>
Tasman	Tasman Sinkware Pty Ltd

1. Summary and recommendations

This report sets out the findings of the Anti-Dumping Commission (the Commission) following an inquiry into whether an exemption should be granted from interim dumping duty and dumping duty and interim countervailing duty and countervailing duty (the duties) under subsections 8(7)(a) and 10(8)(a) of the *Customs Tariff (Anti-Dumping) Act 1975*¹ (the Dumping Duty Act) in relation to the export of certain deep drawn stainless steel sinks (the exemption goods)² from the People's Republic of China (China).

This report sets out the Commission's findings on which the Commissioner of the Anti-Dumping Commission (the Commissioner) relied on to make a recommendation to the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)³ on whether or not to exempt the exemption goods from the duties.

1.1 Recommendations

The Commissioner recommends that:

- For exemption goods that have a capacity of less than 40 litres:
 - the Parliamentary Secretary exempt these goods from the duties;
- For exemption goods that have a capacity of greater than or equal to 40 litres:
 - there is no discretion for the Parliamentary Secretary to exempt these goods from the duties.

1.2 Authority to make the decision

The Parliamentary Secretary may, by notice in writing, exempt goods from the duties if he is satisfied of any of the criteria in subsections 8(7) and 10(8) of the Dumping Duty Act.

This exemption inquiry:

- is concerned with the criterion in subsections 8(7)(a) and 10(8)(a) (like goods criterion), namely whether like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;
- assesses whether available information and evidence provides a sufficient basis for the Parliamentary Secretary to be satisfied of the like goods criterion; and
- if the available information and evidence provides such a basis, recommends how the Parliamentary Secretary should exercise the discretion.

1.3 Initiation of inquiry

As a result of information received during the Commission's review of measures in Review 352 the Commission identified that like or directly competitive goods to the exemption goods may not be available in Australia.

The Commissioner initiated this inquiry on 11 October 2016. The details of the initiation are contained in Anti-Dumping Notice (ADN) No. 2016/104.

¹ All legislative references in this report are to the *Customs Tariff (Anti-Dumping) Act 1975* unless otherwise specified.

² The exemption goods are described further below in section 3.2.

³ On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science. For the purposes of this inquiry, the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

1.4 Findings and conclusions

The Commission has made the following findings and conclusions based on the information provided by interested parties:

- For exemption goods that have a capacity of less than 40 litres:
 - like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;
 - the Commission considers that the criterion in subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act for granting an exemption is satisfied; and
 - there is a discretion to exempt these goods from the duties under subsections 8(7) and 10(8) of the Dumping Duty Act; and
 - the Commissioner recommends that the Parliamentary Secretary exercise the discretion to exempt these goods from the duties.
- For exemption goods that have a capacity of greater than or equal to 40 litres:
 - like goods are offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;
 - the Commission considers that the criterion in subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act for granting an exemption is not satisfied; and
 - there is no discretion for the Parliamentary Secretary to exempt these goods from the duties.

2. Background to the measures

2.1 Original investigation

On 18 March 2014, the Commissioner initiated a dumping and countervailing investigation into deep drawn stainless steel sinks exported to Australia from China following an application lodged by Tasman Sinkware Pty Ltd (Tasman), the only manufacturer of deep drawn stainless steel sinks in Australia.

In that investigation, and as outlined in *Anti-Dumping Commission Report No. 238* (REP 238), the Commission found that:

- deep drawn stainless steel sinks exported to Australia from China were dumped, with margins ranging from 5.0 per cent to 49.5 per cent;
- deep drawn stainless steel sinks exported to Australia from China were subsidised, except for exports by Zhongshan Jiabaolu Kitchen & Bathroom Products Co. Ltd and Primy Corporation Limited, with margins ranging from 3.3 per cent to 6.4 per cent;
- the dumped and subsidised exports caused material injury to the Australian industry producing like goods; and
- continued dumping and subsidisation may cause further material injury to the Australian industry.

On 16 October 2015, following review by the Anti-Dumping Review Panel, the then Parliamentary Secretary affirmed her decision to impose anti-dumping measures.

2.2 Review of measures in Report 352

An application seeking review of measures (Review 352) for goods exported to Australia from China by Shengzhou Chunyi Electrical Appliances Co. Ltd (SCEA) was made on 21 April 2016. Following Review 352, on 17 November 2016, the Parliamentary Secretary altered the variable factors relevant to the taking of the measures.

During the course of Review 352, Milena Australia Pty Ltd (Milena) claimed that the Australian industry does not produce like goods to many of the models imported by Milena. In particular, the laundry tubs produced by the Australian industry cannot be considered like products to 'lipped' laundry tubs imported by Milena.

Review 352 was limited to a review of the variable factors relevant to SCEA's exports and accordingly the Commission did not undertake a like goods assessment at that time. However, as a result of information provided by Milena during Review 352, the Commission initiated this exemption inquiry.

2.3 The goods subject to measures

The goods exported from China covered by the measures (in the form of a dumping duty notice and a countervailing duty notice) 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.

2.4 Tariff classification

The goods subject to measures may be classified under the following subheading in Schedule 3 of the *Customs Tariff Act 1995* (the Tariff Act):

- 7324.10.00, statistical code 52.

3. Exemption inquiry

3.1 Exemption inquiry process

On 11 October 2016, the Commissioner initiated this exemption inquiry by publishing ADN 2016/104, which advised that the exemption inquiry had been initiated, provided details of the goods subject of the inquiry, and outlined the procedures to be followed during the inquiry.

The Commission invited the Australian industry, Tasman, to respond to the inquiry by completing a questionnaire.

The Commission received the following submissions and information during the exemption inquiry:

- A completed questionnaire received from Tasman on 23 November 2016;
- A submission from Milena received on 25 November 2016 in response to Tasman's questionnaire;
- A submission from Milena received on 18 January 2017;
- Information provided by Tasman during a site visit by Commission staff to Tasman's South Australia premises on 20 December 2016; and
- A submission from Milena received on 25 January 2017 in response to the site visit by the Commission to Tasman's premises.

The Commission also had regard to relevant information received during previous matters before the Commission.

3.2 Goods subject of the exemption inquiry

The goods the subject of the exemption inquiry (the exemption goods) are lipped laundry tubs used in the production of laundry cabinets. The lip is formed by the front and side edges at the top of the tub being folded down during manufacture to fit over a free-standing cabinet as depicted below.



The cabinet is separate to, and does not form part of, the exemption goods. The Commission found during the original investigation that free-standing or stand-alone laundry cabinets, whether imported fully assembled or in kit form are not goods subject to the measures.⁴

⁴ REP 238 at 3.6 and Non-Confidential Appendix 1.

3.3 Claims made by Milena

In support of its claim that like or directly competitive goods are not offered for sale in Australia, Milena provided the following evidence and information:

- only one model of stainless steel sinks that Milena imports is comparable to an Australian industry produced good, being a 45 litre inset (i.e. not lipped) tub, and only this model should be considered a like model produced by the Australian industry;
- Milena does not import any of the other Australian industry models; and
- no goods produced by the Australian industry can be considered like goods to the lipped tubs imported by Milena.

3.4 Legislative requirements for an exemption

The exemption goods are being assessed under subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

Subsection 8(7)(a) provides:

- (7) The Minister may, by notice in writing, exempt goods from interim dumping duty and dumping duty if he or she is satisfied:
 - (a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;
- [...]

Subsection 10(8)(a) provides:

- (8) The Minister may, by notice in writing, exempt goods from interim countervailing duty or countervailing duty if he or she is satisfied:
 - (a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;
- [...]

Milena claims there is a basis for the Parliamentary Secretary to be satisfied that like or directly competitive goods are not offered for sale in Australia and requests that the Parliamentary Secretary exercise the discretion arising to exempt the exemption goods from the duties.

3.5 Definition of ‘like or directly competitive goods’

Like goods

The term ‘like goods’ is defined in subsection 269T(1) of the *Customs Act 1901* (the Act). Section 6 of the Dumping Duty Act provides that the Act is incorporated and shall be read as one with the Dumping Duty Act. Accordingly, the definition of ‘like goods’ in the Act is applicable to the Commission’s assessment of whether the exemption goods are ‘like goods’ under subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

Subsection 269T (1) of the Act defines ‘like goods’ as:

Goods that are identical in all respects 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.

Chapter 2 of the *Dumping and Subsidy Manual*⁵ sets out the Commission's established policy and practice in relation to like goods. Where two goods are identical they are automatically regarded as like goods. Where two goods are not alike in all respects the Commission will assess whether they have characteristics closely resembling each other. This assessment will include assessing their physical likeness, commercial likeness, functional likeness and production likeness.

Directly competitive goods

The term 'directly competitive' is not defined in the Dumping Duty Act or the Act and has not been the subject of judicial consideration by Australian courts.

Accordingly, assistance in understanding this term can be derived by having recourse to relevant dictionary definitions and case law. Case law suggests an assessment of a 'direct' relationship is a question of fact and degree.⁶ Drawing on the *Macquarie Dictionary* and case law, the Commission defines 'directly' as:

excluding that which is indirect or remote;⁷ absolutely; exactly; precisely.

The *Macquarie Dictionary* also defines 'competitive' as:

of, relating to, involving, or decided by competition; and

having a feature comparable or superior to that of a commercial rival.

The phrase 'directly competitive' can therefore be taken to refer to goods with comparable features that rival each other in a commercial market. The assessment will be one of fact and degree, and the goods will not merely remotely or indirectly compete.

Satisfying the test within subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act

If there are no like or directly competitive goods offered for sale in Australia, then the requirements of subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act are met (and the discretion to grant the exemption arises).

If there are like or directly competitive goods then it is necessary to consider whether these like or directly competitive goods are offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

3.6 Definition of 'custom and usage of trade'

Although the domestically produced goods may be 'like or directly competitive goods', the Parliamentary Secretary may still grant an exemption to duties in circumstances where the 'like or directly competitive goods' produced in Australia are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the 'custom and usage of trade'.

The term 'custom and usage of trade' is not defined in the Dumping Duty Act or the Act. The *Macquarie Dictionary* defines 'custom' as:

a habitual practice; the usual way of acting in given circumstance; and

habits or usages collectively; convention.

The *Macquarie Dictionary* defines 'usage' as:

customary way of doing; a custom or practice;

⁵ The Commission's *Dumping and Subsidy Manual* is available on the Commission's website at www.adcommission.gov.au

⁶ *Adelaide Development Co Pty Ltd v Corporation of the City of Adelaide and Anor* (1991) 56 SASR 497 at [45].

⁷ *ibid.*

the body of rules or customs followed by a particular set of people; and usual conduct or behaviour.

As custom can only be inferred from a large number of individual acts, the existence of a custom and usage of trade must involve:

*the multiplication or aggregation of a great number of particular instances; but these instances must not be miscellaneous in character, but must have a principle of unity running through their variety, and that unity must show a certain course of business and an established understanding respecting it.*⁸

Custom or usage of trade is a term used in common law in the interpretation of implied terms in contracts within a particular trade or industry.⁹ When considering what is 'custom or trade usage' the courts have concluded that:

1. Custom or usage is established mercantile usage or professional practice;¹⁰ and
2. Evidence of actual market practices is crucial to the existence of a custom or usage. However, universal acceptance is not necessary.¹¹

⁸ *Anderson v Wadey* (1899) 20 N.S.W.R. 412 at p. 417.

⁹ *Castlemaine Tooheys Ltd v Carlton & United Breweries Ltd* (1987) 10 NSWLR 468.

¹⁰ *Byrne v Australian Airlines Ltd* (1995) 185 CLR 410 at [440]

¹¹ *Con-Stan Industries of Australia Pty Ltd v Norwich Winterthur Insurance (Australia) Ltd* (1986) 160 CLR 226

4. Australian industry's offer for sale of 'like' or 'directly competitive' goods

The following table summarises the competing claims of interested parties concerning whether the Australian industry offers like or directly competitive goods for sale.

Milena's claims	Australian industry's response
<p>Milena claimed that there were a number of differences between the exemption goods and goods produced by the Australian industry. These differences included:</p> <ul style="list-style-type: none"> • the lipped design of the exemption goods; • size; • finish; • method of manufacture; • the exemption goods are often supplied for use in apartments and units. 	<p>Tasman claims that it produces like and directly competitive goods to the exemption goods but does not currently produce identical goods. Tasman would need to invest in additional tooling to produce an identical product.</p> <p>Tasman claimed that the 45 litre and 70 litre deep drawn stainless steel laundry tubs it produces and sells in Australia are like and directly competitive to the exemption goods.</p>
<p>Milena argued in response to Tasman's claims that a reduction in its sales following imposition of the measures was due to an increase in imports of tubs with cabinets (and not due to competition with Tasman's tubs). Milena also contended that, if Tasman could produce smaller laundry tubs then it would have done so.</p>	

5. The Commission's assessment – like or directly competitive goods offered for sale in Australia

5.1 Findings

The Commission finds that:

- For exemption goods that have a capacity less than 40 litres:
 - like or directly competitive goods are not offered for sale in Australia; and
 - accordingly, the criterion in subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act for granting an exemption is satisfied.
- For exemption goods that have a capacity greater than or equal to 40 litres:
 - like goods are offered for sale in Australia.

5.2 Like or directly competitive goods offered for sale in Australia

The assessment of whether there like or directly competitive goods requires a determination of whether goods are:

- (a) Like goods – alike in all respects, or where not alike in all respects have characteristics closely resembling those of the imported goods; or
- (b) Directly competitive goods – a directly competitive commercial relationship exists between the goods in the marketplace having regard to the commercial uses of the goods.

Like goods offered for sale in Australia

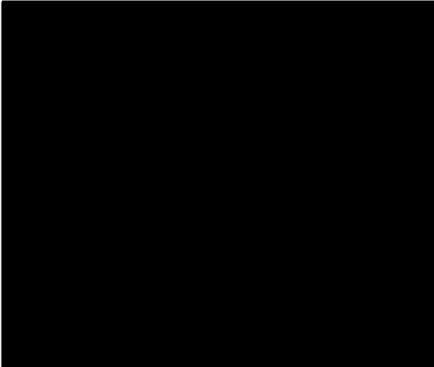
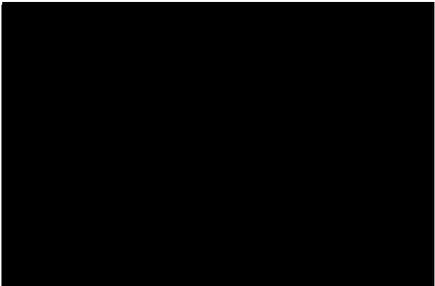
If the exemption goods and Australian produced goods are not alike in all respects, the Commission assesses whether they have characteristics closely resembling each other against the following characteristics:¹²

- (a) physical likeness;
- (b) functional likeness;
- (c) commercial likeness; and
- (d) production likeness.

Milena and Tasman agree, and the Commission accepts, that the exemption goods and goods produced by the Australian industry are not alike in all respects. Accordingly, the Commission has made an assessment in the table below of whether the exemption goods and Australian produced laundry tubs have characteristics closely resembling each other.

¹² See Chapter 2 of the Commission's *Dumping and Subsidy Manual*.

Exemption goods	Australian industry's tubs	Commission's assessment
<i>Physical likeness</i>		
<p>The exemption goods are lipped laundry tubs having a 'lip' along the front and side edges at the top of the tub designed to fit over a purpose built cabinet to form a free-standing laundry unit.</p> <p>Milena imports lipped tubs in various sizes, the two most common being a 45 litre tub and a 35 litre tub.</p> <p>Milena also claimed that its main laundry tubs comprise a unique satin finish, which hides watermarks and provides a 'glow' effect.</p>	<p>Tasman does not produce lipped laundry tubs.</p> <p>Tasman produces inset laundry tubs that are mounted by inserting into a hole in a benchtop (similar to a traditional kitchen sink) and have a horizontal top edge that sits flush with the benchtop.</p> <p>Tasman recognises the difference between its laundry tubs and lipped laundry tubs and indicated it would need to invest in additional tooling to produce lipped tubs.</p> <p>Tasman currently manufactures 45 litre and 70 litre tubs. Tasman claimed it has the capability to make smaller tubs but has not done so.</p>	<p>The Commission considers that the exemption goods and Australian produced goods are not physically alike to the extent that the exemption goods:</p> <ol style="list-style-type: none"> (1) have a lipped design (an additional fold around the top of the laundry tub) rather than a horizontal top edge designed to sit on a benchtop; and (2) include a much smaller capacity model (35 litre) than the tubs produced by Tasman. <p>The Commission is satisfied that Tasman does not supply in Australia:</p> <ul style="list-style-type: none"> • lipped laundry tubs; or • smaller capacity tubs. <p>The Commission does not accept that the difference in finish claimed by Milena is a material difference.</p>
<i>Functional likeness</i>		
<p>The exemption goods are fitted onto a free-standing cabinet to produce a stand-alone laundry unit for domestic use.</p> <p>The ultimate end use of the exemption goods, once fitted to a cabinet, is to hold water and provide a laundry solution in a residential environment.</p>	<p>Tasman's tubs are inserted onto a benchtop, but can be mounted under a granite benchtop such that the top edges of the tub are not visible (undermount).</p> <p>Tasman stated that it is probably the decision of the end user when determining what type of tub to install, i.e. whether to build an inset or undermount tub into cabinetry, or purchase a free-standing laundry unit.</p> <p>Tasman stated that its 45 and 70 litre tubs are designed and suitable for houses but accepted that smaller free-standing tubs would be more suitable for smaller confined areas in apartments and units.</p>	<p>The Commission is satisfied that, once installed, lipped laundry tubs and inset laundry tubs:</p> <ul style="list-style-type: none"> • have the same end use; • are capable of performing the same or similar functions; and • are functionally substitutable. <p>However, the Commission notes that Tasman's 45 litre and 70 litre tubs are designed and suitable for houses, while Milena's 35 litre capacity laundry units are more suitable for use in apartments.</p>
<i>Commercial likeness</i>		
<p>The exemption goods are imported by Milena for the purpose of manufacturing free-standing laundry units.</p> <p>During the original investigation period another manufacturer of free-standing laundry units, Everhard Industries Pty Ltd, also manufactured free-standing laundry units using imported lipped laundry tubs.</p>	<p>Tasman sells its inset tubs to customers in four categories:</p> <ol style="list-style-type: none"> (1) Electrical and retail (2) Plumbing supplies (3) Hardware (4) Cabinet makers <p>Tasman provided sales data that shows sales of its inset tubs increased slightly since the</p>	<p>The Commission is satisfied that the exemption goods do not compete directly with locally produced tubs. The exemption goods are only purchased by manufacturers of free-standing laundry units.</p> <p>However, the exemption goods do compete downstream, as part of a free-standing laundry unit, and the Commission has analysed Milena</p>

Exemption goods	Australian industry's tubs	Commission's assessment
<p>The Commission understands that the exemption goods are only purchased by manufacturers of free-standing laundry units and are not sold in the Australian market for any other purpose.</p> <p>Free-standing laundry units are then sold to end users through plumbing supplies, hardware and retail channels.</p>  <p>Milena further stated that there was little to no effect on its sales for tub sizes that Tasman does not make.</p>	<p>imposition measures, particularly sales of 70 litre tubs.</p>	<p>and Tasman's sales volumes from 2013 to 2016. Noting that the anti-dumping measures were first imposed in August 2014, the Commission has found that:</p>  <ul style="list-style-type: none"> Tasman has increased its sales of 45 litre and 70 litre inset tubs since 2014. <p>The Commission considers that the effect of the measures on the different sizes of Milena's free-standing laundry units indicates that smaller capacity laundry tubs are less commercially alike to the 45 litre and 70 litre tubs produced by Australian industry.</p>
<i>Production likeness</i>		
<p>Milena claimed that different production processes between its imported lipped tubs and Tasman's inset tubs include:</p> <ul style="list-style-type: none"> the lipped design and additional fold; construction from a single sheet of stainless steel with no welding to join the tub to the top edge; a special drawing process; and a unique satin finish. 	<p>Tasman stated that it:</p> <ul style="list-style-type: none"> glues clips on the sides of its inset tubs for the purpose of mounting the tubs onto a benchtop; there is no difference in the production process for its 45 litre and 70 litre laundry tubs; and has the capability to make smaller tubs (e.g. 35 litre) on existing machinery without additional investment. <p>In relation to lipped laundry tubs, Tasman claimed that it:</p> <ul style="list-style-type: none"> would need to invest in additional tooling to produce a lipped tub; and has considered manufacturing lipped tubs but the price point is low. 	<p>The Commission is satisfied that the production process for producing the exemption goods and locally manufactured tubs by deep-drawing stainless steel sheet in a press is similar.¹³</p> <p>The Commission notes that an additional process is required to produce the exemption goods by forming the lip around the top edges of the tub. Tasman confirmed that it would need to invest in additional tooling to produce lipped tubs.</p> <p>The Commission does not consider that the other production differences claimed by Milena are material differences.</p>

Milena is currently the only known importer of the exemption goods, therefore the Commission's analysis is restricted to those imports. Milena imports the exemption goods in two sizes: 45 litre capacity and 35 litre capacity lipped laundry tubs.

¹³ See description of this process in REP 238 at 3.2.

The Commission is satisfied that the Australian industry produces like goods to 45 litre lipped laundry tubs. This is consistent with the finding made in REP 238.¹⁴

In relation to the 35 litre capacity lipped laundry tubs, the available evidence supports a finding that like goods are not offered for sale in Australia. This is particularly demonstrated by the different effect of the current measures on Milena's sales of free-standing laundry units utilising the 35 litre and 45 litre capacity lipped laundry tubs. In summary:

- Tasman does not manufacture lipped laundry tubs and would need to invest in additional tooling in order to do so;
- prices of lipped laundry tubs are too low for Tasman to be competitive;
- lipped laundry tubs do not compete directly with Tasman's inset tubs;
- Tasman concedes that smaller tubs are more suited to apartments and units, whereas the larger sizes it manufactures are designed for houses;
- Tasman has the capability to manufacture smaller capacity tubs but chooses not to, effectively excluding itself from the apartment market; and
- Milena's sales of free-standing laundry units with a 35 litre tub have been less affected by the imposition of measures.

The smallest tub produced by the Australian industry has a capacity of 45 litres; the largest of the smaller sized tubs imported by Milena has a capacity of 35 litres. The Commission considers it is reasonable for purposes of this exemption inquiry to use the halfway point between these sizes, i.e. 40 litres, to delineate the set of smaller sized tubs for which there are no like goods offered for sale in Australia.

Directly competitive goods offered for sale in Australia

The Commission does not consider that there is a directly competitive commercial relationship in the marketplace between the exemption goods and Australian produced goods having regard to their commercial uses. The exemption goods are only purchased by manufacturers of free-standing laundry units such as Milena, whereas locally produced inset tubs are sold direct to end users for installation in a dwelling.

5.3 Conclusions

The Commission finds that the Australian industry:

- does not offer for sale like or directly competitive goods to the exemption goods to the extent that the exemption goods have a capacity less than 40 litres;
- does offer for sale goods that are like to the exemption goods to the extent that the exemption goods have a capacity greater than or equal to 40 litres.

The Commission finds that the exemption goods with a capacity of less than 40 litres are not offered for sale in Australia (and therefore are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade). Accordingly the conditions of subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act for granting an exemption are satisfied for the exemption goods with a capacity of less than 40 litres.

There are like goods offered for sale in Australia (to the extent that the exemption goods have a capacity greater than or equal to 40 litres) and accordingly it is necessary to consider whether the like goods offered for sale in Australia are offered to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

¹⁴ REP 238 at Non-Confidential Appendix 1

6. To all purchasers on equal terms under like conditions having regard to the custom and usage of trade

Milena's claims	Australian industry's response
<p>Milena made no claim or submission concerning whether or not the like goods offered for sale in Australia are offered to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.</p> <p>Milena's claims were only to the effect that like or directly competitive goods were not offered for sale in Australia at all.</p>	<p>Tasman claims that its products are available to all purchasers on equal terms under like conditions.</p>

7. The Commission's assessment – to all purchasers on equal terms under like conditions having regard to the custom and usage of trade

7.1 Finding

The Commission finds that the like goods to the exemption goods offered for sale in Australia (i.e. those with a capacity of greater than or equal to 40 litres) are offered to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

7.2 To purchasers on equal terms under like conditions having regard to the custom and usage of trade

The Commission has examined the evidence and information provided in this inquiry to consider whether the like goods to the exemption goods offered for sale in Australia (i.e. those with a capacity of greater than or equal to 40 litres) are offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

Milena made no claim or submission on this point. Tasman claimed that its products are available to all Australian purchasers on equal terms under like conditions. In support of its claim, Tasman provided a brochure and referred the Commission to its Australian website.¹⁵ The Commission notes that Tasman's website indicated that its products have a high degree of availability within Australia, and that there appear to be approximately 2,000 Australian retail outlets that stock Tasman's products (including sinks with a capacity of greater than or equal to 40 litres). No other relevant evidence was provided.

7.3 Conclusion

The Commission finds that the like goods to the exemption goods offered for sale in Australia (i.e. those with a capacity of greater than or equal to 40 litres) are offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade. Accordingly the conditions of subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act for granting an exemption are not satisfied for the exemption goods with a capacity of greater than or equal to 40 litres.

¹⁵ www.oliveri.com.au

8. Recommendations

Based on the Commission's examination of the information and evidence provided during the inquiry, the Commissioner considers that:

- like or directly competitive goods to the exemption goods that are less than 40 litres in capacity are not offered for sale in Australia; and
- like goods to the exemption goods that are greater than or equal to 40 litres in capacity are offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

The Commissioner recommends that:

- for exemption goods that have a capacity of less than 40 litres:
 - the Parliamentary Secretary exercise the discretion arising to exempt these goods from the duties; and
- for exemption goods that have a capacity of greater than or equal to 40 litres:
 - there is no discretion for the Parliamentary Secretary to exempt these goods from the duties.

8.1 Effective date of exemption

The timing for granting of an exemption is at the discretion of the Parliamentary Secretary. The exemption takes effect on the day specified in the instrument of exemption made by the Parliamentary Secretary (subsections 8(8A) and 10(9A)).¹⁶

The Commission recommends that the exemption is backdated to the date that this inquiry was initiated, that is, 11 October 2016.¹⁷

¹⁶ Subsections 8(8A) and 10(9A) also provide that if the exemption is given because of an application for exemption then the day the exemption takes effect must not be earlier than the day the application is made. No application for exemption was made in relation to this inquiry.

¹⁷ See ADN 2015/41.

9. Attachments

Attachments	Confidentiality	Title
Attachment 1	Non-confidential	Exemption Instrument 6 of 2017