

**IN THE AUSTRALIAN ANTI-DUMPING COMMISSION**  
**CERTAIN DEEP DRAWN STAINLESS STEEL SINKS**  
**EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

TASMAN SINKWARE PTY LTD

**Australian industry**

AND

Franke (China) Kitchen System, Co Ltd and Franke Asia Sourcing Ltd

**Exporter Interests**

**RESPONSE OF THE AUSTRALIAN INDUSTRY TO THE SUBMISSION OF THE EXPORTER INTERESTS**

This submission is made on behalf of the Australian industry producing certain deep drawn stainless steel sinks in Australia, specifically the applicant to *Dumping and Countervailing Investigation ADC 238*, Tasman Sinkware Pty Ltd.

The Australian Industry makes this submission in response to the submissions of the Exporter Interests dated 18 September 2014.

***Summary***

The Australian Industry notes the comments of the Exporter Interests that the decision of the Commission to exercise the sampling provisions available to it under section 269TACAA of the Customs Act 1901 (**the Act**) were made prior to the Parliamentary Secretary extending the deadline for the publication of the Statement of Essential Facts (**SEF**) under section 269ZHI of the Act.

However, the Australian Industry does not accept the Exporter Interests' contention that the decision to extend the deadline for the publication of the SEF, changed the circumstances under which the Commission exercised the sampling provisions under section 269TACAA of the Act.

***The 'sampling' and 'extended SEF deadline' decisions***

In its Sampling Report dated 26 May 2014, the Commission noted that it would carry out the investigation, and make findings, on the basis of information obtained from an examination of a selected number of exporters. The Commission explicitly stated that it would do so because, in

this case the number of exporters were so large that it was not practicable to examine the exports of all of those exporters, in accordance with subsection 269TACAA(1) of the Act.

In making the selection of exporters, the Commission, identified that they represented:

- (a) a statistically valid sample of those exporters; and
- (b) the largest volume of exports to Australia that can reasonably be examined.

Specifically, the Commission selected exporters that represented “approximately 41% of the total import volume of deep drawn stainless steel sinks from China” (‘Deep Drawn Stainless Steel Sinks’, *Sampling Report*, 26 May 2014, p. 4)

By ADN 2014/50, the Parliamentary Secretary extended the deadline for publication of the SEF.

***Matters before the Commission and the Parliamentary Secretary***

The Australian industry observes that the Commission exercised its power of ‘sampling’ under subsection 269TACAA(1) of the Act, **after** receiving responses to the exporter questionnaire from the Exporter Interests, **and eleven other exporters**.

Further, the Parliamentary Secretary extended the deadline for publication of the SEF, **after**, the Commission received the completed responses of the Exporter Interests, and eleven other exporters.

Both decisions were made in the following context:

- (a) that the number of exporters in relation to the investigation was so large that it was not practicable to examine the exports of all of those exporters; and
- (b) the information obtained from a selected number of exporters who constituted a statistically valid sample of those exporters.

Therefore, it is not open for the Exporter Interests to argue that the act of the Parliamentary Secretary in extending the SEF deadline on 20 June 2014 was a *novus actus interveniens*, having the effect of invalidating, or re-setting the earlier ‘sampling’ decision of the Commission. It is submitted that the Parliamentary Secretary’s decision was made in response to, and in support of, the Commission’s selection and ‘sampling’ decision.

***Requirements of subsection 269TACAA(2) of the Act***

The Australian Industry submits that subsection 269TACAA(2) of the Act, does not compel the Commission to select all exporters who have provided responses to questionnaire. To do so would defeat the purpose of subsection 269TACAA(1) of the Act.

All that subsection (2) requires is that, in circumstances that would not prevent the **timely completion** of the investigation, then it may be possible for the Commission to include the information of the non-selected exporters in the investigation. This provision is subject to the evidentiary and probative requirements of the Act and the respective WTO Agreements. In other words, it is not possible for the Commission to have regard to unreliable information, that is, information not subject to verification, and placement on the statutory public record.

Further, subsection 269TACAA(2) does not impose upon the Parliamentary Secretary an obligation to extend the SEF deadline by such time as would permit the Commission to have regard to all exporters who have provided information. Again, such an interpretation would defeat the purpose of subsection (1), that is to provide for the orderly selection of exporters for the purpose of the investigation, where resources do not permit the information submitted by all exporters to be considered by the Commission.

As identified in its *Sampling Report*, the Commission acknowledged the resource constraints upon it, specifically:

“the volume of total exports to Australia represented by those exporters that have provided responses to the Exporter Questionnaires that the Commission considers it can reasonably limit the investigation to; and

“the current and foreseeable investigative workload of the Commission in other investigations, and the resources available to examine exporters of deep drawn stainless steel sinks”

Therefore, the availability of time (as potentially extended) to visit all exporters who have provided information is not the only reason for performing a ‘sampling’ exercise under subsection (1).

### ***The unfairness of the Exporter Interests' request***

To accept the Exporter Interests' submission is to give preference to that party above the eleven other exporters who were identified in the *Sampling Report*, as having provided information in response to the questionnaire. To follow this approach would invalidate the sampling methodology applied under subsection (1), and would provide an unfair advantage to the Exporter Interests.

Therefore, the Australian Industry submits that subsection (2) may only be applied in those rarest of circumstances where, subject to the timely completion of the investigation, it is possible for the information of all exporters (not initially selected under subsection (1)) to be extended the same opportunity to have their information considered. Applied here, that would require the Commission to be satisfied that to consider the submitted information of the additional thirteen exporters would not prevent the timely completion of the investigation. It is submitted that that is not possible in this case.

### ***No further extensions to the SEF deadline***

It would render the provisions of subsection 269TACAA(1), trite, to allow in every circumstance, such further extensions to the SEF deadline as would be required to permit all exporters (not initially selected) to have their submitted information considered in the investigation. To do so, would breach the condition under subsection (2), requiring the timely completion of investigations.

### ***Conclusions***

In summary, the Australian Industry asserts that:

- the submitted information of the Exporter Interests should not be included in the investigation;
- the submitted information of exporters not initially selected under subsection (1) should only be considered in circumstances where all such exporters may have their information so considered without putting at risk the timely completion of the investigation;
- the circumstances do not exist in this case to permit the submitted information of the Exporter Interests or the other exporters not initially selected, to be considered in the investigation, as to do so would not allow the timely completion of the investigation;

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- a further extension to the SEF deadline should not be made as it will not address the broader resourcing issues of the Commission to allow a timely completion of the investigation.

DATED 22 September 2014

SIGNED:

*International Trade Remedies Advisor*.....

for the Australian industry