



**Australian Government**

**Anti-Dumping Review Panel**

# **ADRP REPORT No. 49**

Certain Deep Drawn Stainless Steel Sinks  
exported from the People's Republic of  
China

27 February 2017

## Abbreviations

ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
The applicant	Milena Australia Pty Ltd
AEP	Ascertained export price
ANV	Ascertained normal value
AUD	Australian dollar
the ADC	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
China	the People's Republic of China
CTMS	Cost to Make and Sell
C (IO) Regs	Customs (International Obligations) Regulation 2015
DA 65 & 66	Anti-Dumping Commission Duty Assessment Report No 65 & 66 Deep Drawn Stainless Steel Sinks imported by Milena Australia Pty Ltd (unpublished)
DDSSS	Deep Drawn Stainless Steel Sinks
FOB	Free On Board
the goods	the goods the subject of the review application
GOC	Government of China
MEPS	MEPS International Pty Ltd
Milena	Milena Australia Pty Ltd
the Parliamentary Secretary	Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
Platts	S & P Global Platts
REP 352	Anti-Dumping Commission Report No 352 - Review of Anti-Dumping Measures applying to Deep Drawn Stainless Steel Sinks Exported from the People's Republic of China (October 2016)
REP 238	Anti-Dumping Commission Report No 238 Alleged Dumping and Alleged Subsidiation of Deep Drawn Stainless Steel Sinks exported from the People's Republic of China (February 2015)
REP 45	Anti-Dumping Review Panel Report No 45 Deep Drawn Stainless Steel Sinks exported from the People's Republic of China (December 2016)
Review Panel	Anti-Dumping Review Panel
SEF 352	Statement of Essential Facts Report No 352
SCEA	Shengzhou Chunyi Electrical Appliances Co. Ltd.
SG&A	Selling, general and administrative costs
304 SS CRC	304 stainless steel cold rolled coil

# Table of Contents

Abbreviations	1
Introduction	3
Background to the application	3
Conduct of the Review	5
Grounds for Review	7
Relevant Legislation	7
Construction and Assessment of Grounds	9
Conclusions/Recommendations	18

## Introduction

1. The following applicant, Milena Australia Pty Ltd (Milena), has applied, pursuant to section 269ZZE of the *Customs Act 1901* (the Act), for a review of a decision of the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary) to publish findings in relation to a review of anti-dumping measures in respect of deep drawn stainless steel sinks (DDSSS) exported from the People's Republic of China (China).
2. The application for review was not rejected under section 269ZZG of the Act and the Review Panel accepted the grounds considered reviewable relating to the dumping duty notice. The Review Panel rejected one ground. A notice of the proposed review, as required by section 269ZZI of the Act, was published on 5 January 2017. Pursuant to section 269ZZK of the Act, a report must be provided to the Minister no later than 60 days following the publication of the notice of review.
3. The Senior Member of the Review Panel has directed in writing pursuant to section 269ZYA that the Panel for the purpose of this review be constituted by me.

## Background to the application

4. On 21 April 2016, Milena lodged an application requesting a review of the anti-dumping measures as they apply to DDSSS exported from China to Australia by Shengzhou Chunyi Electrical Appliances Co. Ltd (SCEA). The application was made on the basis that certain variable factors relevant to the taking of anti-dumping measures had changed. The Commission decided not to reject the application and initiated a review on the 16 May 2016. The review period was stated as 1 April 2015 to 31 March 2016.<sup>1</sup>

---

<sup>1</sup> Anti-Dumping Notice 2016/53.

5. The goods to which the application relates 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.*
6. On 5 September 2016, the Commissioner published the Statement of Essential Facts Report No 352 (SEF 352) which outlined the facts which form the basis of his recommendation to the Parliamentary Secretary in relation to the review of measures.<sup>2</sup> The ADC presented on the 6 September 2016 its duty assessment of DDSSS imported by Milena which covered the periods 26 March 2015 to 25 September 2015 and 26 September 2015 to 25 March 2016 (DA 65 & 66).<sup>3</sup>
7. Review of Anti-Dumping Measures Deep Drawn Stainless Steel Sinks exported from the People's Republic of China (REP 352) was made to the Parliamentary Secretary by the Anti-Dumping Commission (ADC) in October 2016.<sup>4</sup> The Commissioner noted that the variable factors relevant to the taking of those measures had changed (being the normal value, export price, the non-injurious price and the amount of the countervailable subsidy received) in relation to exports by SCEA. The Commissioner recommended to the Parliamentary Secretary that the dumping duty notice and countervailing duty notice have effect in relation to SCEA as if different variable factors had been ascertained.
8. REP 352 includes a summary which outlines the relevant history of the DDSSS case including details about the original investigation regarding DDSSS exported from China contained in Anti-Dumping Commission Report 238 (REP 238).<sup>5</sup>

---

<sup>2</sup> Statement of Essential Facts Report Number 352 published 5 September 2016.

<sup>3</sup> ADRP Decision No. 45 (unpublished)

<sup>4</sup> Report 352 Review of Anti-Dumping Measures Deep Drawn Stainless Steel Sinks exported from the People's Republic of China by Shengzhou Chunyi Electrical Appliances Co. Ltd.

<sup>5</sup> REP 352 paragraphs 2.1 - 2.3.

9. On 21 November 2016, the Parliamentary Secretary published a notice altering the original dumping duty notice and countervailing duty notice as if different variable factors had been fixed in relation to all exports by SCEA of DDSSS exported to Australia from China.<sup>6</sup>

## Conduct of the Review

10. In accordance with section 269ZZK(1) of the Act, the Review Panel must recommend that the Minister (in this case, the Parliamentary Secretary) either affirm the decision under review, or revoke it and substitute a new specified decision. In addition, section 269ZZK(1A) of the Act requires that if recommending a new specified decision, it must be materially different from the reviewable decision.
11. In undertaking the review, section 269ZZ(1) of the Act requires the Review Panel to determine a matter required to be determined by the Minister (in this case, the Parliamentary Secretary) in like manner as if it was the Minister having regard to the considerations to which the Minister would be required to have regard if the Minister was determining the matter. In carrying out its function the Review Panel is not to have regard to any information other than to 'relevant information' as that expression is defined in section 269ZZK(6) of the Act. For the purpose of the review, the relevant information is that to which the ADC had, or was required to have, regard when making the findings set out in the report to the Minister.<sup>7</sup>
12. In addition to relevant information, the Review Panel may have regard to conclusions based on relevant information that is contained in the application for review and any submissions received under section 269ZZJ.<sup>8</sup>
13. Unless otherwise indicated in conducting this review, I have had regard to the application by Milena (including documents submitted with the application or referenced in the application). I have also had regard to the following:

---

<sup>6</sup> Public Notice ADN 2016/107 published 21 November 2016.

<sup>7</sup> Section 269ZZK(6)(ca) of the Act.

<sup>8</sup> Section 269ZZK(4) of the Act.

- Report 352 and information relevant to the review which was referenced therein and in particular, the confidential attachments dealing with the normal value, export price and dumping margins;
  - DA 65 and No 66 and its confidential attachments;
  - SEF 352 and documents referenced in the SEF;
  - REP 238 and information relevant to the review which was referenced therein; and
  - Exporter questionnaires completed by SCEA and its confidential attachments.
14. The ADC also provided relevant documents containing confidential information. These documents and the correspondence with the ADC concerning them were not made publicly available.
15. There were no submissions lodged under section 269ZZJ of the Act in relation to this review.
16. If a conference is held under Section 269ZZHA of the Act, then the Review Panel may have regard to further information obtained at the conference to the extent that it relates to the relevant information and to conclusions reached at the conference based on that relevant information. I held a conference with representatives of the ADC on the 13 February 2017 for the purpose of obtaining further information in relation to confidential attachments to relevant ADC reports. A non-confidential summary of the conference was placed on the public record and is available on the Review Panel's website. In accordance with section 269ZZK(4) of the Act, I have had regard in this review only to information which was relevant information as defined in section 269ZZ(6) of the Act. I have considered the grounds and information set out in the application made by the applicant subject to the constraints in section 269ZZK(4) and (6) of the Act.
17. I note, for the record, that REP 352 relies on information contained in DA 65 & 66 which is not on the public record, as the review of measures and the duty assessments relate to the same period. It was necessary to clarify certain evidence

that the ADC relied upon in REP 352, sourced from DA 65 & 66, at the above mentioned conference.

18. Milena indicated that it had not been given access to the ADC calculations relating to the normal value for confidentiality reasons. For this reason, Milena has not been able to provide indepth evidence in relation to the normal value calculation. I have accorded Milena some latitude in this regard as I understand that as an importer, without access to the confidential information of the exporter, there are challenges in substantiating certain aspects of the normal value constructed by the ADC.

## Grounds for Review

19. Milena contends that the dumping duty is not the correct or preferable decision on the basis of the following grounds:
- The construction of the normal value under subsection 269TAC(2)(c) of the Act is erroneous;
  - The decision that the cost of grade 304 stainless steel cold-rolled coil (304 SS CRC) used in the manufacture of DDSSS did not reflect competitive market costs under regulation 43(2) of the Customs (International Obligations) Regulation 2015 (C(IO) Regs);
  - The use of the benchmark of 304 SS CRC based on S&P Global Platts (Platts) North American and European prices in the construction of the normal value under subsection 269TAC(2)(c) of the Act; and
  - The calculation of the profit under regulation 45(2) of the C(IO) Regs is erroneous due to insufficient consideration of the commercial likeness of the exporter's (SCEA) other goods sold domestically.

## Relevant Legislation

20. Normal Value: 269TAC(2)(c) of the Act provides:
- Subject to this section, where the Minister*
- *is satisfied that:*
    - because of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under subsection (1); or*



- ii. *because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1); the normal value of goods exported to Australia cannot be ascertained under subsection (1); or*
- *is satisfied, in a case where like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length by the exporter, that it is not practicable to obtain, within a reasonable time, information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1); the normal value of the goods for the purposes of this Part is:*
  - *Except where paragraph (d) applies, the sum of:*
    - i. *such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and*
    - ii. *on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export - such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale; or ...'*

## 21. C(IO) Regs

Regulation 43 Determination of cost of production or manufacture - the relevant provision dealing with competitive market costs is regulation 43(2) of the C(IO) Regs as follows:

If

- a. *an exporter or producer of like goods keep records relating to the like goods; and*
- b. *the records:*
  - i. *are in accordance with generally accepted accounting principles in the country of export; and*
  - ii. *reasonably reflect competitive market costs associated with the production or manufacture of like goods;*

*the Minister must work out the amount by using the information set out in the records.*

Regulation 45 Determination of Profit - the relevant provision dealing with competitive market costs is regulation 45(2) of the C(IO) Regs is as follows:

*The Minister must, if reasonably practicable, work out the amount by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.*

*Reg 45(3) If the Minister is unable to work out the amount by using the data mentioned in subsection (2), the Minister must work out the amount by:*

*(a) identifying the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of export; or...*

## Construction and Assessment of Grounds

22. Milena considers that the normal value has been incorrectly calculated on a number of grounds as follows:

*The construction of the normal value under subsection 269TAC(2)(c) of the Act is erroneous.*

23. Milena considers that the construction of the normal value is not accurate or fair, and accordingly not correct or preferable. It indicates it has had limited access to the relevant information in REP 352 and has based its application on the information it does have. It notes that other exporters have lower dumping margins (between 5% and 10%) whereas SCEA dumping margin is 34.13% which it considers excessive. Milena claims that the ADC should not have constructed a normal value. Milena did not provide any additional evidence of why the construction of a normal value under section 269 TAC(2)(c) of the Act was erroneous.

24. In REP 352, the ADC found that there were insufficient sales of like goods in China that would be **considered relevant** (emphasis added) for determining a normal value based on domestic selling prices, that is, under section 269TAC(1) of the Act.<sup>9</sup> The ADC also found there were no sales by the exporter of like goods to third countries. The ADC constructed a normal value under section 269TAC(2)(c) of the Act, taking into account the relevant provisions (Regulations, 43, 44 and 45) of the C(IO) Regs and with adjustments made under section 269TAC(9) of the Act.
25. The preferred method to establish a normal value for goods exported to Australia is to use the price paid for like goods sold by the exporter in the ordinary course of trade in arms length transactions in the country of export. Should sales not be in the ordinary course of trade or, for other reasons not be considered relevant or suitable, Section 269TAC of the Act provides other methods to establish the normal value. The intent remains, as expressed by Moore, J. in the Metal Manufacturers judgement,<sup>10</sup> to develop a 'normal value' which approximates a competition based price as closely as possible.
26. Given the information access issues outlined by Milena, I considered it appropriate to review the decision making process undertaken by the ADC to determine a normal value under section 269TAC(2)(c) of the Act, paying particular attention to the 'commercial likeness' of the domestic sales vis a vis the export sales. I reviewed the information submitted in the confidential exporter questionnaires for DA 65 & 66 submitted by SCEA outlining its sales on the Chinese domestic market, the specifications of goods the subject of these sales, together with the differences between these and the export sales to Australia. I also reviewed the confidential appendices in DA 65 & 66, dealing with the calculations of the cost to make and sell (CTMS), the selling, general and administrative expenses (SG&A) and the profit as this is the information relied upon in REP 352.

---

<sup>9</sup> Report No 352 Review of Anti-Dumping Measures applying to DDSSS exported to Australia from the Peoples Republic of China by Shengzhou Chunyi Electrical Appliances Co Ltd, section 5.3 pages 12 - 13.

<sup>10</sup> Metal Manufacturers Ltd(T/A MM Cables) v Comptroller General of Customs - BC 9507720 FCA, NG 665 of 1993 13 April 1995 para 11.

27. Milena proposed there were issues associated with the 'commercial likeness' of the goods sold domestically in China. I note that the ADC made a number of statements regarding why it did not consider these domestic sales were relevant for assessing a normal value under section 269TAC(1) of the Act due to the key differences between the domestic sales and the export sales. In order to explore this aspect in more detail, I held a conference under section 269ZZHA of the Act to clarify this information. In particular, to assess the information that was before the ADC in relation to the 'commercial likeness' of the domestic sales and the key differences between these and the goods exported to Australia.
28. The ADC explained its rationale regarding why it considered there were insufficient sales of like goods in the Chinese domestic market which would be relevant for assessing a normal value under section 269TAC(1) of the Act. It also highlighted the information supplied by the exporter, SCEA, in relation to this issue in terms of the differences between the exported goods and the domestically sold goods. This information is detailed in the Conference Summary available on the ADRP website.<sup>11</sup>
29. The ADC also emphasised that it had aligned its approach in REP 352 with that which had been taken in the original investigation into DDSSS in REP 238 in relation to the differences between export and domestic prices.<sup>12</sup> The ADC found:
- “Noting the nature and number of above differences, and the limitations of the exporters’ cost data it is considered that an accurate and meaningful method cannot be found to adjust domestic selling prices of models that aren’t exact model matches to exported goods to make them comparable with export prices”.*
30. I have reviewed the analysis undertaken by the ADC and the rationale as to why it could not determine the normal value of the goods exported to Australia based on the Chinese domestic selling prices. In my view this approach by the ADC is

---

<sup>11</sup> ADRP Conference Summary Deep Drawn Stainless Steel Sinks dated 13 February 2017.

<sup>12</sup> ADC Report 238 Deep Drawn Stainless Steel Sinks exported from the People’s Republic of China (February 2015) page 40.

reasonable in the circumstances and correct in terms of the legislative provisions. In essence, while both the domestic sales and the export sales are considered 'like goods', that is both meet the definition of the goods under inquiry, there are differences that would make it difficult to make comparisons between the normal value and export price. Therefore, I agree with the ADC finding that the domestic sales are not considered relevant for normal value purposes. The ADC has also considered whether it would be appropriate to use sales by the exporter to third countries. These were also dismissed on a similar basis to the reasons given in relation to the domestic sales.

31. In my view, the ADC has applied the provisions relating to normal value correctly and have utilised section 269TAC(2)(c) of the Act in an appropriate manner to determine the normal value. For this reason, I consider the Parliamentary Secretary decision was correct or preferable in relation to this ground.

*The decision that the cost of grade 304 stainless steel cold-rolled coil (304 SS CRC) used in the manufacture of DDSSS did not reflect competitive market costs under regulation 43(2) of the Customs (International Obligations) Regulation 2015 (C(IO) Reg) and the use of the benchmark of 304 SS CRC based on S&P Global Platts North American and European prices in the construction of the normal value under subsection 269TAC(2)(c) of the Act.*

32. Milena states that the ADC should not have rejected the SCEA's competitive market costs for 304 SS CRC and substituted a benchmark in the construction of the normal value for DDSSS. Milena claims that in the original investigation, the ADC used MEPS International Pty Ltd (MEPS) data as the benchmark price of the 304 SS CRC in the construction of the normal value and suggests that a comparison should now be made with these prices. It claims that the ADC should not have substituted the cost of the 304 SS CRC with a benchmark based on the Platts prices. It further suggests that the ADC should have used the stainless steel prices from local Australian suppliers or prices paid by Tasman (the Australian industry) rather than the benchmark cost used. I note that these claims were also made in its submission to the ADC following the publication of SEF 352 and referenced in REP 352.

33. The ADC in REP 352, indicates that it constructed a normal value under section 269TAC(2)(c) of the Act, taking into account the relevant provisions of regulations 43, 44 and 45 of the C(IO) Regs.<sup>13</sup> Regulation 43(2) requires the ADC to determine the cost of production by using information in the exporter's records if two conditions are met, firstly, that the records are in accordance with generally accepted accounting principles in the country of export, and secondly, such records reasonably reflect competitive market costs associated with the production or manufacture of the goods.
34. The ADC indicated that in its original investigation (REP 238), it had found that the cost of 304 SS CRC did not reasonably reflect competitive market costs given that prices were affected by the Government of China (GOC) influence on the iron and steel industry.<sup>14</sup> It stated that 304 SS CRC is a major cost element in the production of DDSSS and due to the influence of the GOC it is not a competitive market cost.<sup>15</sup> In REP 352, the ADC indicated that it had found no evidence that the situation with respect to the competitive market costs in relation to 304 SS CRC in China had changed since its finding in REP 238. The ADC further stated that while it was satisfied that the exporter's records, SCEA, were in accordance with generally accepted accounting principles, it found that SCEA records do not reasonably reflect competitive market costs associated with the production or manufacture of the goods in relation to 304 SS CRC. Therefore, regulation 43(2) of the C(IO) Regs could not be used to assess the costs of production of the raw material 304 SS CRC for SCEA.<sup>16</sup>
35. The ADC indicated it considered what a suitable competitive market substitute price would be for this product and looked to use the same data source, that is, MEPS International Pty Ltd (MEPS), as had been used in REP 238. MEPS did not consent to the use of its information. The ADC sourced an alternate provider,

---

<sup>13</sup> REP 352 Sections 5.3.1 to 5.3.4, pages 14 – 16.

<sup>14</sup> REP 238 Section 6.9 and non-confidential appendix 4.

<sup>15</sup> REP 352 page 14.

<sup>16</sup> REP 352 page 14.

Platts, which had prices in Northern America and Europe (the regions used in REP 238) which it considered reliable and suitable for use in the benchmark.<sup>17</sup>

36. In essence Milena raises two issues. Firstly, did the ADC assess whether the cost of 304 SS CRC in China reflected competitive market costs as required under reg 43(2) of the C(IO) Regs? Secondly, was it open for the ADC to use the Platts prices for North America and Europe as the benchmark?
37. I have reviewed the cost information for 304 SS CRC supplied by the exporter, SCEA, and also the information relating to the ADC assessment of whether such costs reflected competitive market costs in China, noting that it based this finding on the information outlined in REP 238.<sup>18</sup> I note that the ADC indicated in REP 352 that it had found no evidence that the situation had changed in relation to the influence of the GOC in the steel industry since its original investigation.
38. Having considered this evidence and given there was no additional information supplied to the Review Panel by Milena that challenged this finding, it is my view that the ADC has considered this issue in accordance with the legislation. Accordingly, I consider it was reasonable for the ADC to find that the costs of production for 304 SS CRC were not reasonably competitive market costs and regulation 43(2) of the C(IO) Regs did not apply.
39. The second issue is whether it is open to the ADC to use the Platts price information for North America and Europe as an appropriate benchmark for 304 SS CRC. Milena submitted to the Review Panel that 304 SS CRC prices in markets more closely related to Australia or prices paid by Tasman (the Australian industry) should be used rather than North American or European prices. It supplied confidential information on prices available in Australia that it considered more suitable.

---

<sup>17</sup> REP 352 pages 14 – 15.

<sup>18</sup> REP 238 Non-confidential appendix 4.

40. In REP 352, the ADC indicates that it has adopted the same approach in using an international benchmark as the original investigation (REP 238) but using Platts pricing information rather than MEPS. The ADC also stated that Milena had made a submission on the benchmark price following SEF 352 however the ADC did not consider this evidence sufficient to modify its approach.
41. In REP 238, the ADC explained its rationale for sourcing an internationally based benchmark from MEPS (average of European and North American prices) for 304 SS CRC on the basis that it:
- has not been influenced by the Chinese domestic market prices for steel;
  - has not been influenced by the GOC; and
  - equates to a competitive market cost.<sup>19</sup>
42. The Dumping and Subsidy Manual (the Manual) provides guidance on a range of methods that may be used to ascertain a major cost input.<sup>20</sup> There are a number of alternatives depending on the circumstances of the particular situation. This includes the use of prices in other countries.
43. In constructing the normal value under section 269TAC(2)(c), the Minister is required to determine the costs of production. Regard must be had to the relevant provisions of regulation 43 of the C(IO) Regs. In the circumstances of this case, the ADC determined that the exporters records “do not reasonably reflect competitive market costs associated with the production or manufacture of like goods”. There is no other specific legislative guidance, as to what costs of production are required to be used to determine the cost of manufacture or production of like goods. The Manual indicates that a number of different alternative substitutes may be used. In the context of the framework of establishing a benchmark, it is my opinion that it is open to the Minister to determine an appropriate cost of production having considered the available evidence. In the circumstances of this review, the approach taken by the ADC appears reasonable.

---

<sup>19</sup> REP 238 Non-confidential appendix 8 pages 207 - 209

<sup>20</sup> Dumping and Subsidy Manual November 2015, Section 9, page 46.



44. In my view, Milena has not provided any compelling reasons that the approach outlined in paragraph 41 is flawed and that the ADC should have modified its approach in REP 352 from the original methodology used in REP 238. Milena did express its view that prices available in Australia would be more suitable for use as a benchmark than the benchmark chosen. However, it did not explain this in a manner that dealt with the reasons outlined by the ADC in Appendix 8 of REP 238 for its choice of the average of the American and European prices benchmark and its concerns with the use of an Australian price.<sup>21</sup>
45. I note that this finding is also consistent with the finding of the Senior Member of the Review Panel in ADRP Decision No 45 Deep Drawn Stainless Steel Sinks exported from the People's Republic of China December 2016 (unpublished) where similar grounds were raised in an application for review by Milena in relation to a decision of the Commissioner.
46. Therefore, I do not agree that it is incorrect to use the Platts prices as a benchmark in the construction of the normal value under Section 269TAC(2)(c) of the Act. I think it was open for the ADC to conclude that 304 SS CRC did not reflect competitive market costs and to substitute the Platts price as a benchmark in the constructed normal value. For these reasons, I do not consider the Parliamentary Secretary's decision is not correct or preferable.

*The calculation of the profit under regulation 45(2) of the C(IO) Regs is erroneous due to insufficient consideration of the commercial likeness of the other goods of the exporter.*

47. Milena claims that the methodology used to calculate the profit is incorrect as the ADC gave insufficient consideration of the 'commercial likeness' of the other goods sold by the exporter in assessing the profit. It is not entirely clear what particular issue regarding commercial likeness is being made by Milena, but I have assumed that Milena's concern is that the domestic models should not have been

---

<sup>21</sup> REP 238 Non-confidential appendix 8 pages 207 – 209.

considered as commercially like the goods exported to Australia. Hence, the profit rate so calculated should not have been used in constructing the normal value under section 269TAC(2)(c) of the Act.

48. In REP 352, the ADC indicated that it calculated the profit to be used in the determination of the normal value under section 269TAC(2)(c) of the Act, as provided in regulation 45(2) of the C(IO) Regs. The ADC found that all of the domestic sales of the exporter, SCEA, were like goods to those exported to Australia and were in the ordinary course of trade. Accordingly, it used these sales to assess the profit rate to be applied to the constructed normal value.<sup>22</sup>
49. Regulation 45(2) of the C(IO) Regs operates in such way that if the goods sold domestically are 'like' the goods exported to Australia and are in the ordinary course of trade, the data from those domestic sales must, if reasonably practicable, be used to work out the profit in the construction of the normal value under section 269TAC(2)(c) of the Act.
50. As outlined in paragraphs 28 - 30 above, I chose to obtain additional information, via a conference held under section 269ZZHA of the Act, from the ADC regarding its assessment of the domestic sales by the exporter, SCEA, and whether they were like goods to those exported to Australia, given the 'commercial likeness' issue the subject of this ground. I noted the key differences comment in REP 352 and asked that this be explained. The ADC highlighted information supplied by the exporter, SCEA, in relation to this issue which had guided its decision making as well as the approach taken in the original investigation.
51. I have reviewed the confidential calculations in DA 65 & 66, which have been used in REP 352, associated with the domestic sales and am satisfied that these are in the ordinary course of trade. As indicated in paragraph 30 above, I assessed the information provided by the exporter, SCEA, as well as the explanation provided by the ADC regarding whether the domestic sales were 'like goods' to those exported to Australia. I am satisfied, given the information provided by the ADC and by the

---

<sup>22</sup> REP 352 page 16.

exporter that the domestic sales are like goods to those exported to Australia. Accordingly, I consider it was correct to use regulation 45(2) of the C(IO) Regs to determine the profit. I also note that the intent as described in paragraph 25 above is for the normal value to approximate a competition based price as closely as possible. Utilising the profit rate of the exporter's domestic sales assists in achieving this intent.

52. I do not agree with Milena that the Parliamentary Secretary did not make the correct or preferable decision in determining profit in accordance with regulation 45(2) of the C(IO) regs.

## Conclusions/Recommendations

53. Outlined above are the reasons that I am satisfied that the applicant, Milena, has not established that the decision of the Parliamentary Secretary was not the correct or preferable decision in relation to each of the grounds submitted in its review application.
54. Accordingly, pursuant to section 269ZZK(1) of the Act, I recommend that that Parliamentary Secretary affirm the reviewable decision.



.....  
Jaclyne Fisher  
Anti-Dumping Review Panel Member  
27 February 2017