



Australian Government
**Australian Customs and
Border Protection Service**

R E P O R T

TRADE MEASURES BRANCH
REPORT TO THE MINISTER NO. 161
REVIEW OF ANTI-DUMPING MEASURES
SODIUM HYDROGEN CARBONATE
(SODIUM BICARBONATE)
EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA

15 October 2010

PUBLIC RECORD



Australian Government
Australian Customs and
Border Protection Service

Customs Act 1901 – Part XV B

**SODIUM HYDROGEN CARBONATE
(SODIUM BICARBONATE)
EXPORTED FROM THE PEOPLE'S REPUBLIC OF
CHINA**

**Finding in relation to a review of
anti-dumping measures**

Public notice under s. 269ZDB(1)

The Australian Customs and Border Protection Service (Customs and Border Protection) has completed its review of anti-dumping measures applying to sodium hydrogen carbonate (sodium bicarbonate) exported to Australia from the People's Republic of China (China) ("the goods"), which was commenced on 13 May 2010. Recommendations resulting from that review, reasons for the recommendations and material findings of fact and law in relation to the review are contained in Trade Measures Report No. 161 (REP 161).

I, BRENDAN O'CONNOR, the Minister for Home Affairs, have considered REP 161 and have decided to accept the recommendations and reasons for the recommendations, including all the material findings of facts or law set out in REP 161. Under s. 269ZDB(1) of the *Customs Act 1901* (the Act), I declare, for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975* to the extent that anti-dumping measures concerning the goods involved the publication of a dumping duty notice that, with effect from the date of publication of this notice, the dumping duty notice is to be taken to have effect, in relation to exporters generally as if different variable factors had been fixed, relevant to the determination of duty.

To preserve confidentiality, the revised variable factors will not be published. Bona fide importers of the goods can obtain details of the new rates from the Regional Dumping Officer in their respective capital city.

Non-confidential copies of the REP 161 will be sent to all interested parties that participated in the review. Additional copies may be obtained by contacting Trade Measures Office Management, Canberra, on telephone number (02) 6245 5453 or fax number (02) 6275 6990 or tmops3@customs.gov.au. Trade Measures reports are also available on the Customs and Border Protection internet home page at www.customs.gov.au.

Enquiries regarding the outcome of the review may be directed to the case manager on telephone number (02) 6245 5453, fax number (02) 6275 6990 or tmops3@customs.gov.au.

Dated this

8th

day of

November

2010

BRENDAN O'CONNOR
Minister for Home Affairs

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ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
CMAI	CMAI Global Soda Ash Service
Customs and Border Protection	Australian Customs and Border Protection Service
Delegate	The delegate of the Chief Executive Officer of Customs and Border Protection
Focus Products	Focus Products Pty Ltd
FOB	free on board
Ihjuchem	Inner Mongolia Ihjuchem Industrial Co., Ltd
Orica	Orica Australia Pty Ltd
Penrice	Penrice Soda Products Pty Ltd
People's Republic of China	China
Qingdao	Qingdao Hot Chemicals Co, Ltd
Redox	Redox Pty Ltd
S,G&A	selling, general and administrative
the goods	the goods subject to measures
the Minister	The Minister for Home Affairs
VAT	value added tax
Worldsearch	Canbrae Pty Ltd T/A World Search

1. SUMMARY AND RECOMMENDATIONS

This report provides the conclusions and recommendations to the Minister for Home Affairs (the Minister) following a review of the measures applying to exports of sodium bicarbonate¹ from the People's Republic of China (China).

Australian Customs and Border Protection Service (Customs and Border Protection) examined exports of sodium bicarbonate from China to Australia during the period 1 April 2009 to 31 March 2010 (the review period) to determine if the variable factors relevant to the taking of anti-dumping measures had changed.

Customs and Border Protection found that the variable factors had changed. As a result of these findings Customs and Border Protection recommends that the dumping duty notice in respect of sodium bicarbonate exported from China have effect in relation to exporters generally as if different variable factors had been ascertained.

1.1 Applicable law

Division 5 of Part XVB of the Act² enables affected parties to apply for the review of measures. The Division also empowers the Minister to initiate such a review. The Division, among other matters:

- sets out the procedures to be followed by the Chief Executive Officer of Customs and Border Protection (CEO) in dealing with applications or requests and preparing reports for the Minister; and
- empowers the Minister, after consideration of such reports, to leave the measures unaltered or to modify them as appropriate.

The CEO's powers under this Division have been delegated to certain officers of Customs and Border Protection (the delegate).

After conducting a review of anti-dumping measures, the delegate must give the Minister a report containing recommendations³.

1.2 Recommendations

The delegate recommends that the Minister sign the attached schedules (**confidential attachment 1 and 2**) and sign the attached public notice (**confidential attachment 3**) to declare that the dumping duty notice in respect of sodium bicarbonate exported from China have effect in relation to exporters the subject of this review generally as if different variable factors had been ascertained.

¹ More particularly described in section 3.2 of this report.

² A reference in this report to a provision of legislation, unless otherwise specified, is a reference to the *Customs Act 1901*.

³ Section 269ZDA(1).

1.3 Summary of findings and conclusions

1.3.1 The goods and like goods

The goods— The goods subject to the measures, which are more particularly described in section 3.2 of this report, are sodium hydrogen carbonate, also referred to as sodium bicarbonate or baking soda.

Like goods—Sodium bicarbonate manufactured by Penrice Soda Products Ltd (Penrice) are like goods⁴ to the goods because they are physically similar and functionally and commercially interchangeable, as set out in section 3.3 of this report.

1.3.2 Review of variable factors

The delegate is satisfied that the export prices, normal values and non-injurious prices relevant to the taking of anti-dumping measures on sodium bicarbonate exported to Australia from China have changed. Section 4 of this report provides details of the assessments for export prices and normal values. Section 5 provides details of the assessment of non-injurious prices.

1.3.3 Should the measures be revoked?

The delegate is satisfied that if the anti-dumping measures to which this review relates had not been taken, the Minister would be entitled to take such measures.

The delegate is satisfied that the measures should not be revoked.

⁴ Section 269T.

2. INTRODUCTION

2.1 The current review

On 6 February 2010 Customs and Border Protection published a notice inviting certain persons to apply for a continuation of the measures applying to sodium bicarbonate from China (the measures). Penrice Soda Products Pty Ltd (Penrice) lodged an application for continuation of the measures. A continuation inquiry was conducted and a final report was provided to the Minister on 5 October 2010.

On 20 April 2010, Penrice Soda Products Pty Ltd (Penrice) lodged an application requesting a review of anti-dumping measures⁵ applying to sodium bicarbonate exported to Australia from China. On 13 May 2010, Customs and Border Protection initiated the review of anti-dumping measures in relation to sodium bicarbonate exported from China following the consideration of the application by Penrice.

Public notification of initiation of the review of measures was made on 13 May 2010 in *The Australian* newspaper. ACDN No. 2010/16 was also published.

On 23 August 2010, the delegate placed on the public record a statement of essential facts (statement of essential facts 161) on which the delegate proposed to base his recommendation to the Minister concerning the review of anti-dumping measures. Interested parties were invited to lodge submissions in response to statement of essential facts 161 by no later than 13 September 2010. One submission was received and the non-confidential version of this submission is available on the public record.

Within 155 days of the initiation of the inquiry, or such period as the Minister allows,⁶ the CEO must give to the Minister a report in respect of the goods the subject of the application. The CEO's final report to the Minister is due by 15 October 2010.

In formulating the final report, the CEO must have regard to the request for review, any submissions relating generally to the review of measures to which the CEO has had regard for the purpose of formulating the statement of essential facts, the statement of essential facts, any submission made in response to the statement of essential facts that is received by Customs and Border Protection within 20 days after the statement of essential facts was placed on the public record, and any other matters that the CEO considers to be relevant to the review.⁷

The current measures applying to sodium bicarbonate from China are due to expire on 2 November 2010.

2.2 Review period

At the commencement of the review, Customs and Border Protection set 1 April 2009 to 31 March 2010 as the review period.

⁵ In accordance with s.269ZA of the Act

⁶ Section 269ZH

⁷ Section 269ZDA(3)

2.3 History of anti-dumping measures

On 16 March 2005, an investigation was initiated into sodium bicarbonate exported from China, following an application by Penrice.

In this investigation, as outlined in Trade Measures Report No. 98, it was found that:

- exports of the goods from China were at dumped prices;
- the Australian industry producing like goods had suffered material injury as a result of those dumped goods; and
- future exports from China may be at dumped prices and that continued dumping may cause further material injury to the Australian industry.

Accordingly, it was recommended to the Minister that anti-dumping measures be imposed on the goods exported from China.

The Minister accepted this recommendation and published a dumping duty notice on 2 November 2005. Notification of the Minister's decision was given in ACDN 2005/39.

On 20 July 2006, a review of measures was initiated at the request of the Minister. As a result of the review the measures were varied. Notification of the revised measures was published on 14 May 2007 after the Minister accepted the recommendations of Trade Measures Report No. 119.

On 30 April 2010, a continuation inquiry was initiated following consideration of an application by Penrice. The continuation inquiry was completed and the final report was sent to the Minister on 5 October 2010.

The review the subject of this report was initiated on 13 May 2010 following the consideration of an application by Penrice.

3. THE GOODS & LIKE GOODS

3.1 Findings

The goods—The goods subject to the measures, which are more particularly described in section 3.2 of this report, are sodium hydrogen carbonate, also referred to as sodium bicarbonate or baking soda.

Like goods—Sodium bicarbonate manufactured by Penrice are like goods⁸ to the goods for the reasons set out in section 3.3 of this report.

3.2 The goods

The goods subject to anti-dumping measures, in the form of a dumping duty notice, are sodium hydrogen carbonate, also referred to as sodium bicarbonate or baking soda, which can be manufactured via the natural alkali method or the Solvay method. For the natural alkali method, alkali is mined, purified, filtered, carbonised and dried before packing. The Solvay method is a synthetic process that includes crude bicarbonate formation, filtration, light ash finishing and refining.

The goods are classified under tariff subheading 2836.30.00, statistical code 27 in Schedule 3 to the *Customs Tariff Act 1995*. The rate of Customs duty on sodium bicarbonate is 'free' from all sources.

3.3 Like goods

Penrice manufactures sodium bicarbonate at its plant in Osborne, South Australia, using the Solvay method of manufacture. The sodium bicarbonate manufactured there is marketed in three broad grades in Australia: pharmaceutical, food and general purpose/industrial (for use in stockfeed, pool products/water treatment and industrial processes). The grades are defined by chemical purity, consistency and particle size. Particle size ranges from extra fine to coarse.

Penrice sells sodium bicarbonate in a range of packing sizes from 25kg bags to 1200kg bulka bags.

In the original investigation in 2005⁹ sodium bicarbonate manufactured in Australia were found to be like goods to sodium bicarbonate exported from China. It was identified that some sodium bicarbonate sourced from China was exported and sold in specialty packs. These were smaller packs with high quality packaging, often with features such as tamper evident caps and zip locks, which Penrice was unable to supply. These products are predominately used in the pool industry.

Despite the differences in packaging, it was found that the physical characteristics of the locally produced sodium bicarbonate closely resemble those of the 'specialty packs' imported from China. As a result, these goods were not excluded from the measures but instead a separate dumping margin and variable factors were calculated for this product. To differentiate it from other imported sodium bicarbonate, it was referred to as 'specialty' packs and all other sodium bicarbonate as 'regular' packs.

⁸ Section 269T.

⁹ Trade Measures Report No 98.

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Based on information provided by Penrice and importers, Customs and Border Protection remains satisfied that sodium bicarbonate manufactured by Penrice are like goods to the sodium bicarbonate imported from China because they are:

- physically similar: the goods are produced in a similar grade, purity, appearance and standard;
- commercially interchangeable: the goods directly compete with Australian produced goods; and
- functionally interchangeable: the goods are used to perform the same function and have the same end-use.

The sodium bicarbonate imported from China only comes in one grade and is predominately used in general purpose/industrial applications.

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4. REVIEW OF VARIABLE FACTORS: EXPORT PRICE AND NORMAL VALUE

4.1 Findings

The delegate is satisfied that:

- the export price for the goods exported by Inner Mongolia Ihjuchem Industrial Co., Ltd (Ihjuchem), other 'regular' pack exporters and 'specialty' pack exporters can be determined having regard to all relevant information¹⁰;
- the normal value for Ihjuchem, other 'regular' pack exporters and 'specialty' pack exporters can be determined having regard to all relevant information¹¹ and will include appropriate adjustments to ensure fair comparison with export prices;
- the goods exported by Ihjuchem during the review period were dumped, with a dumping margin of 18%;
- the goods exported by other 'regular' pack exporters and 'specialty' pack exporters were dumped, with a dumping margin of 47%; and
- the variable factors relevant to the taking of anti-dumping measures have changed.

4.2 Introduction

This review was initiated after Penrice lodged an application claiming that one or more of the variable factors had changed. This section explains the results of Customs and Border Protection's inquiry into whether the variable factors had changed since measures were imposed.

4.3 Importers

In its application for a review of the measures, Penrice identified seven importers of the goods, being:

- Craig Moyston & Co. Pty Ltd;
- Redox Pty Ltd;
- Waterco Limited;
- Biolab Australia Pty Ltd;
- Orica Australia Pty Ltd;
- Deltrex Pty Ltd; and
- BEC Feed Solutions Pty Ltd.

¹⁰ s. 269TAB(3) of the Act.

¹¹ s. 269TAC(6) of the Act.

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Customs and Border Protection examined data from its import database and considered that it was appropriate to visit the four importers who accounted for over 50% of imports in the period April 2009 to March 2010. These importers were:

- Canbrae Pty Ltd T/A World Search (World Search);
- Focus Products Pty Ltd (Focus Products);
- Orica Australia Pty Ltd (Orica); and
- Redox Pty Ltd (Redox).

Orica declined to complete an importer questionnaire and did not supply any information for the purpose of the continuation inquiry.

The remaining three companies cooperated with the inquiry and visit reports for these companies are available on the public record.

4.4 Exporters

Penrice identified one manufacturer of the goods, being Ihjuchem.

An exporter questionnaire was sent to all suppliers of sodium bicarbonate from China in the review period that were identified in a search of Customs and Border Protection's import database. A response to the exporter questionnaire was received from Qingdao Hot Chemicals Co, Ltd (Qingdao), an exporter of 'specialty' packs, which was placed on the public record. Ihjuchem and all other suppliers declined to complete the exporter questionnaire.

Customs and Border Protection did not visit any exporters of sodium bicarbonate due to non cooperation from manufacturers of sodium bicarbonate in China. Customs and Border Protection did not visit Qingdao as it was not the manufacturer of the goods.

As mentioned in statement of essential facts 161, sodium bicarbonate is referred to as either 'regular'¹² packs or 'specialty'¹³ packs. Ihjuchem exports 'regular' packs of sodium bicarbonate. Ihjuchem is the only entity with exporter specific anti-dumping measures. Therefore, the discussion of variable factors is categorised as:

- Ihjuchem;
- other 'regular' pack exporters; or
- 'specialty' pack exporters

for the purposes of assessing export price, normal values and dumping margins in this report.

A summary of the export price, normal value and dumping margin calculations for Ihjuchem, other 'regular' pack exporters and 'specialty' pack exporters is contained at **confidential attachments 4 and 5**.

¹² Regular packs are sodium bicarbonate generally packaged in 25kg bags or bags containing one tonne or more.

¹³ Specialty packs are usually less than 10 kg and include features such as high quality packaging materials, end users' brand graphics, tamper evident caps and zip locks. These packs are generally destined for use in swimming pools.

4.5 Export Price

Ihjuchem

Ihjuchem declined to participate in the review inquiry, therefore, sufficient information was not furnished or was not available to enable the export price for Ihjuchem to be established using:

- the price paid or payable for the goods by the importer¹⁴;
- the price paid at which the goods were sold by the importer less prescribed deductions¹⁵; or
- the price determined having regard to all the circumstances of the exportation¹⁶.

The export price for Ihjuchem was established having regard to all relevant information¹⁷.

A single weighted average export price for sodium bicarbonate exported to Australia during the review period by Ihjuchem was calculated using the sales price of all exports made on free on board (FOB) terms. Data obtained from Customs and Border Protection's import database and from information gathered during visits to importers of sodium bicarbonate was used to determine Ihjuchem's export prices, excluding any part of the price that represented a charge in respect of the transport of the goods after exportation and any other matter arising after exportation.

Other 'Regular' pack exporters

In the absence of cooperation by exporters in China, sufficient information was not furnished or was not available to enable the export price for 'regular' pack exporters to be established using:

- the price paid or payable for the goods by the importer¹⁸;
- the price paid at which the goods were sold by the importer less prescribed deductions¹⁹; or
- the price determined having regard to all the circumstances of the exportation²⁰.

Export prices for 'regular' pack exporters were established having regard to all relevant information²¹.

Consistent with the 2007 review of measures, a single weighted average export price was calculated for sodium bicarbonate exported to Australia during the review period by 'regular' pack exporters. To do this Customs and Border

¹⁴ s. 269TAB(1)(a) of the Act

¹⁵ s. 269TAB(1)(b) of the Act

¹⁶ s. 269TAB(1)(c) of the Act

¹⁷ s. 269TAB(3) of the Act

¹⁸ s. 269TAB(1)(a) of the Act

¹⁹ s. 269TAB(1)(b) of the Act

²⁰ s. 269TAB(1)(c) of the Act

²¹ s. 269TAB(3)

Protection used data obtained from its import database, excluding any part of the price that represented a charge in respect of the transport of the goods after exportation and any other matter arising after exportation.

'Specialty' pack exporters

Qingdao, an exporter of 'specialty' packs, provided a completed exporter questionnaire, however advised it is not a manufacturer of sodium bicarbonate. The costs of production for sodium bicarbonate could therefore not be established and Customs and Border Protection did not verify the Qingdao data.

Therefore, sufficient information was not furnished or was not available to enable the export price for specialty pack exporters to be established using:

- the price paid or payable for the goods by the importer²²;
- the price at which the goods were sold by the importer less prescribed deductions²³; or
- the price determined having regard to all the circumstances of the exportation²⁴.

Export prices for 'specialty' pack exporters were established having regard to all relevant information²⁵.

Consistent with the 2007 review of measures, a single weighted average export price was calculated for sodium bicarbonate exported to Australia during the review period by 'specialty' pack exporters. To do this Customs and Border Protection used data obtained from its import database, excluding any part of the price that represented a charge in respect of the transport of the goods after exportation and any other matter arising after exportation.

4.6 Normal Value

4.6.1 Penrice's claims

Penrice claimed that Chinese domestic selling prices and Chinese costs are not suitable for determining normal value. Customs and Border Protection considered these claims in the circumstances of this review and concluded that assessments of the suitability of sales and cost data *provided by Chinese exporters* was not required given the very limited exporter data available. Appendix 1 to this report provides further details of the reasons for its conclusions in this regard.

Insufficient information relating to Chinese domestic selling prices and Chinese manufacturing costs was provided by exporters of the goods. As a result Customs and Border Protection is precluded from using Chinese domestic selling prices and Chinese manufacturing costs for sodium bicarbonate to establish normal values²⁶. However, it is open for Customs and Border Protection to construct Chinese

²² s. 269TAB(1)(a) of the Act

²³ s. 269TAB(1)(b) of the Act

²⁴ s. 269TAB(1)(c) of the Act

²⁵ s. 269TAB(3)

²⁶ s. 269TAC(1) and s. 269TAC(2)(c)

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domestic selling prices for sodium bicarbonate using estimates of costs to make and sell in China, and an amount for profit, if applicable²⁷.

Penrice submitted constructed normal values in its application for review. In addition, Penrice made subsequent submissions with updated figures for constructed normal values²⁸. In the latter submissions Penrice changed the coke, salt and electricity costs from its approach in the application for review to an approach based upon European costs for these inputs. Penrice also included a distribution charge.

Customs and Border Protection is of the view that the estimates of coke, salt and electricity costs in China provided by Penrice in the application for review are the most reasonable basis for constructed normal values. These estimates are based upon data particular to China. In contrast, the later submissions by Penrice relied on European data for these cost components. The later Penrice submissions failed to demonstrate that Chinese costs for coke, salt and electricity did not reasonably reflect competitive market costs in China. Further details of this assessment are contained in Appendix 2.

In relation to the distribution charge submitted by Penrice, which is based on its own experience of such charges including those to the point of exportation, Customs and Border Protection prefers to rely on an indexation of Chinese distribution costs verified in the previous review. This is discussed as part of selling, general and administration (SG&A) expenses below.

4.6.2 Approach to normal value

In the absence of cooperation by exporters in China, sufficient information was not available to determine the normal value of sodium bicarbonate in China using domestic selling prices²⁹, costs³⁰ or third country sales³¹. The normal values were determined having regard to all relevant information³². The most relevant and suitable information available was information provided by Penrice in the applications for the continuation inquiry and review of measures³³ and information from the 2007 review of measures.

In the applications, Penrice identified Ihjuchem as a natural alkali producer and provided a constructed cost model for the calculation of the normal value using this production method.

Penrice also provided a constructed cost model for manufacturers who use the Solvay method of production. In the absence of any other information, Customs and Border Protection considered all manufacturers, except for Ihjuchem, to use the Solvay method of production.

²⁷ s. 269TAC(6)

²⁸ Penrice submissions of 15 June 2010 and 28 July 2010 contained data and explanations to support revised constructed normal value models. The latter also quantified the increase to constructed normal value incurred by the revision.

²⁹ s. 269TAC(1) of the Act

³⁰ s. 269 TAC(2)(c) of the Act

³¹ s. 269 TAC(2)(d) of the Act

³² s. 269TAC(6) of the Act

³³ Non-confidential versions of these applications are available on the Electronic Public Record at <http://adpr.customs.gov.au>

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Penrice provided acceptable justification for the use of production costs in both models. Penrice used information from commentaries such as the CMAI Global Soda Ash Service and, where no independent information was available, its own costs. However, the SG&A expenses were replaced as Penrice had based SG&A expenses in its cost model on its own costs. Customs and Border Protection considers that this may not reasonably reflect such expenses incurred in domestic sales of sodium bicarbonate in China.

Customs and Border Protection therefore replaced Penrice's calculation for SG&A expenses with Ihjuchem's verified SG&A expenses (including distribution costs) from the 2007 review of measures. These SG&A expenses were indexed to the current review period of 1 April 2009 to 31 March 2010 in accordance with the change in export price for Ihjuchem from the 2007 review of measures to the current review period.

Penrice added a 10% profit margin to its cost model to allow for a minimum expected rate of return for the capital intensive chemical industry.

Customs and Border Protection tested the reasonableness of this profit margin by comparing it with Ihjuchem's profit margin in the 2007 review period. Based on this comparison Penrice's estimation of profit is considered reasonable and a 10% profit margin has been applied to the cost model.

Ihjuchem

Normal value was constructed based on a combination of information provided by Australian industry for the natural alkali method of production and information from the 2007 review of measures.

Certain factors should be taken into account in constructing normal value to ensure fair comparison of export prices and normal values. Customs and Border Protection therefore had regard to domestic and export inland freight, export charges to the FOB level and value added tax (VAT)³⁴.

In the absence of verified information from Chinese manufacturers, these costs (other than VAT) were derived from the 2007 review of measures and indexed to the current review period using the method described above for SG&A.

Other 'Regular' pack exporters

Normal value was constructed based on a combination of information provided by Australian industry for the Solvay method of production and information from the 2007 review of measures.

As mentioned above, certain factors should be taken into account in constructing normal value to ensure fair comparison of export prices and normal values. Customs and Border Protection therefore had regard to domestic and export inland freight, export charges to the FOB level and VAT.

³⁴ Customs and Border Protection understands that Chinese export rates are subject to a value added tax (VAT) liability calculated as FOB value x (VAT rate – VAT refund rate). Any residual liability that is derived (i.e. where the refund rate is less than the VAT rate) is considered to be a difference in taxation (compared to a VAT exclusive domestic price) that affects the price comparison between export price and normal value.

According to Ministry of Finance People's Republic of China website: (http://webcache.googleusercontent.com/search?q=cache:xUzewJ_DQMMJ:zhidao.baidu.com/question/91819865.html+2009), the export VAT rebate for sodium bicarbonate in the review period was 9 percent. Therefore, the net VAT added to the constructed normal values was 8% (17% – 9% rebate). This percentage was applied to the export price for Ihjuchem for the natural alkali method and the export price for other 'regular' pack exporters for the Solvay method and added as an adjustment to the constructed normal values respectively.

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Again, in the absence of verified information from Chinese manufacturers, these costs (other than VAT) were derived from the 2007 review of measures and indexed to the current review period.

'Specialty' pack exporters

Qingdao did not make any sales of 'specialty' packs on the domestic market in the review period and as mentioned previously, it is not the manufacturer of the goods. Therefore, appropriate and complete costs for normal value purposes were not available.

To establish normal values, the current ascertained export price of 'specialty pack' exporters was uplifted by the dumping margin calculated for 'regular' pack exporters. This is consistent with the approach taken in the 2007 review of measures.

4.7 Dumping Margin

Measurement of a dumping margin is not required for the purposes of revising the variable factors, however it may be relevant to the consideration of whether measures should be revoked (refer section 6).

Customs and Border Protection calculated a dumping margin for all exporters of sodium bicarbonate for the review period by comparing the weighted average of export prices over the whole of the review period with the weighted average of corresponding normal values over the whole of that period³⁵.

Dumping margins are summarised in the following table:

Exporter	Method	Dumping Margin
Ihjuchem	s. 269TACB(2)(a)	18%
All other 'regular' pack exporters	s. 269TACB(2)(a)	47%
'Specialty' pack exporters	s. 269TACB(2)(a)	47%

The dumping duty rates are slightly different to those published in statement of essential facts 161 due to the correction of a minor calculation error.

4.8 Submission in response to statement of essential facts 161

Penrice put forward a submission in regard to the suitability of Chinese market prices.

Market Situation

Penrice claimed that Customs and Border Protection's position that the absence of co-operation from Chinese exporters in the investigation negates the need for an assessment of a market situation is reasonable provided that the normal value is determined from information not sourced from a Chinese exporter. Penrice recommended that SG&A costs from its cost model be utilised rather than Ihjuchem's indexed SG&A costs from the previous review of measures.

³⁵ Subsection 269TACB(2)(a).

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This claim was considered but not accepted. The delegate remains satisfied that Penrice's SG&A expenses may not reasonably reflect such expenses incurred in domestic sales of sodium bicarbonate in China and that using Ihjuchem's verified SG&A expenses (including distribution costs) from the 2007 review of measures, indexed to the current review period, is more appropriate.

Artificially low costs

(i) Coking coal

Penrice claimed coke prices in China are well below the European and Australian coke prices due to the government imposed 40% export tax. Penrice claimed there is an acceptable benchmark for coke pricing, with Australian and European coke prices available as its reference points. Penrice considered that the Australian and European coke prices throughout the investigation period are representative of competitive coke prices on the international market and believe Chinese prices are artificially low and not representative of prices determined on a competitive basis.

This claim was considered but not accepted. The evidence in this case is not sufficient to demonstrate that the prices of coke in China do not reasonably reflect competitive market costs in China. Firstly, the delegate is not satisfied that there is a generally accepted international benchmark price for coke which means it is difficult to assess the Chinese coke prices with reference to an arguably reasonable comparison point. Secondly, the delegate is not satisfied as to whether or why the coke prices in Europe (submitted by Penrice as a suitable surrogate) were necessarily indicative of the competitive market costs for coke in China in the review period.

The delegate remains satisfied that the CMAI data for coke costs in China, as submitted by Penrice in the application for the review, remains a reasonable basis for coke costs in the constructed normal values.

(ii) Electricity

Penrice claimed it had identified that electricity prices in Inner Mongolia are lower than other provinces and that electricity prices are suppressed due to government influence via controls on electricity prices. Penrice requested that Customs and Border Protection use alternative electricity prices sourced external to China, such as Europe and Australia.

The delegate remains satisfied that the existence of variable electricity prices, whether by region or industry, does not of itself indicate that the prices of electricity in China for sodium bicarbonate producers do not reasonably reflect competitive market costs in China. Similarly, the non-specific reference to under-priced energy is not sufficient basis for a conclusion that the prices of electricity in China for sodium bicarbonate producers do not reasonably reflect competitive market costs in China.

The delegate remains satisfied that the CMAI data for electricity costs in China, as submitted by Penrice in the application for the review, remains a reasonable basis for electricity costs in the constructed normal values.

(iii) Salt

Penrice claimed it understands that the Government of China controls the price of salt, however is unable to confirm to what extent the government control extends to prices for industrial grade salt.

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There is no evidence to demonstrate that the prices for salt in China do not reasonably reflect competitive market costs in China. Therefore, the delegate remains satisfied the CMAI data for salt costs in China, as submitted by Penrice in the application for the review, remains a reasonable basis for salt costs in the constructed normal values.

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5. REVIEW OF VARIABLE FACTORS: NON-INJURIOUS PRICE

5.1 Findings

The delegate is satisfied that the non-injurious price can be established by using the Australian industry's selling prices for April 2009 to March 2010 for general purpose sodium bicarbonate less any charges to the free on board (FOB) level.

5.2 Introduction

Dumping duties may be applied where it is established that dumped imports have caused or threaten to cause injury to the Australian industry producing like goods. The level of dumping duty cannot exceed the margin of dumping, but a lesser duty may be applied if it is sufficient to remove the injury.

The calculation of the non-injurious price provides the mechanism whereby this lesser duty provision is given effect. The non-injurious price is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping³⁶.

Anti-dumping duties are based on FOB prices in the country of export. Therefore a non-injurious price is calculated in FOB terms for the country of export.

5.3 Unsuppressed selling price

The method of calculating a non-injurious price is not given in the legislation, but it is generally derived from Australian industry's unsuppressed selling price. The unsuppressed selling price is a price at which the Australian industry might reasonably be able to sell the goods in a market unaffected by dumped imports.

Customs and Border Protection's preferred approach to establishing the unsuppressed selling price observes the following hierarchy:

1. Industry selling prices at a time unaffected by dumping
2. Constructed industry prices – industry cost to make and sell plus an appropriate profit
3. Selling prices of undumped imports

Having calculated the unsuppressed selling price, Customs and Border Protection then calculates a non-injurious price by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia.

In Trade Measures Report No. 98, the unsuppressed selling price was established using industry's cost to make and sell plus a profit. To determine the appropriate level of profit to apply Customs and Border Protection used the profit applicable to sales of general purpose sodium bicarbonate in a period unaffected by dumping, being the 2001 calendar year.

In the 2007 review of measures, Customs and Border Protection used industry's selling prices at a time unaffected by dumping. As measures were imposed in

³⁶ The NIP is defined in section 269TACA.

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2005, Customs and Border Protection considered that the period of September 2005 to June 2006 was a period unaffected by dumping and as it represented the most recent data, sales in this period were used to determine the unsuppressed selling price.

5.3.1. Australian Industry's claims

Penrice submitted that the most appropriate method of determining the unsuppressed selling price for the current review was to use Penrice's selling price for the 2009 calendar year.

Penrice argues that it had suffered injury in the first quarter of 2010 and as a result it was not appropriate to use the April 2009 to March 2010 period.

5.3.2 Customs and Border Protection's assessment

The delegate remains satisfied it is appropriate to use the Australian industry's selling price for the review period of April 2009 to March 2010. In statement of essential facts 160 relating to the continuation of measures for sodium bicarbonate, Customs and Border Protection found that Penrice did not suffer profit or price injury as a result of dumping in the review period. While injury was found, this pertained to sales volume and market share. Furthermore, an assessment of the unsuppressed selling price in the 2009 calendar year as opposed to the review period resulted in an immaterial difference between the two values found.

Customs and Border Protection was consistently informed by interested parties that sodium bicarbonate imported from China competed with Penrice's general purpose sodium bicarbonate. Therefore, Customs and Border Protection considers that it is appropriate to use sales of this grade to determine the unsuppressed selling price.

In the 2007 review of measures, Customs and Border Protection assessed the Penrice unsuppressed selling price as being at a reasonably equivalent point of competition to the importers' sales into the market. Therefore importer profit and SG&A were deducted, among other things, to calculate the non-injurious price. However, Customs and Border Protection has found in this review that the main point of competition between exporters and Penrice is at the Free Into Store/ Delivered Duty Paid level to major importers/distributors. Therefore, in order to determine the non-injurious price at the FOB level Customs and Border Protection has made deductions from the unsuppressed selling price for:

- overseas freight and marine insurance;
- Australian landing and port charges;
- Customs and quarantine clearances; and
- delivery charges from the port to the warehouse.

5.3.3 NIP for 'specialty' pack exporters

In the 2007 review of measures, Customs and Border Protection noted that 'specialty' packs had significantly different packaging and export prices relative to 'regular' packs, and that the Australian industry had not sold 'specialty' packs. For those reasons separate non-injurious prices for exporters of 'specialty' packs were calculated. The non-injurious prices were set at the same level as the weighted

average export prices of the 'specialty' pack exporters. A consistent approach has been adopted for this review.

5.3.4 Effect of the review

The export price, normal value and non-injurious price for all exporters of the goods to Australian has increased since the 2007 review of measures

From this review of the variable factors, the normal value for Ihjuchem and the non-injurious price for other 'regular' pack exporters and 'specialty' pack exporters become the operative³⁷ measure.

The calculations for the unsuppressed selling price and non-injurious price are contained in **confidential attachment 6**.

³⁷ The operative measure is the lesser of the normal value or non-injurious price. The difference between the revised operative measures and the revised export prices provide for the fixed component of interim dumping duty per unit.

6. SHOULD THE MEASURES BE REVOKED?

6.1 Findings

The delegate is satisfied that if the anti-dumping measures to which this review relates had not been taken, the Minister would be entitled to take such measures.

The delegate is satisfied that the measures should not be revoked.

6.2 Introduction

The delegate considered whether a recommendation to the Minister should be made to revoke the dumping duty notice published under s.269TG(1) and (2) as it applies to a particular exporter or to exporters generally.

There were no submissions received regarding revocation of measures relating to this review.

This section outlines the factors Customs and Border Protection considers relevant in making the finding stated at 6.1 above.

6.3 Assessment

The following sections set out the factors relevant to the finding that if the anti-dumping measures to which this review relates had not been taken, the Minister would be entitled to take the measures.

6.3.1 Dumping during the review period

As set out at section 4.7 above, imports from China during the review period were at dumped prices. The dumping margin for Ihjuchem has increased from the 2007 review of measures and is now 18%. The dumping margin for other 'regular' pack and 'specialty' pack exporters has also increased and is 47%. These dumping margins were not insignificant and without measures in place, Chinese exporters of sodium bicarbonate would be likely to continue to export at dumped prices.

6.3.2 Injury during the review period

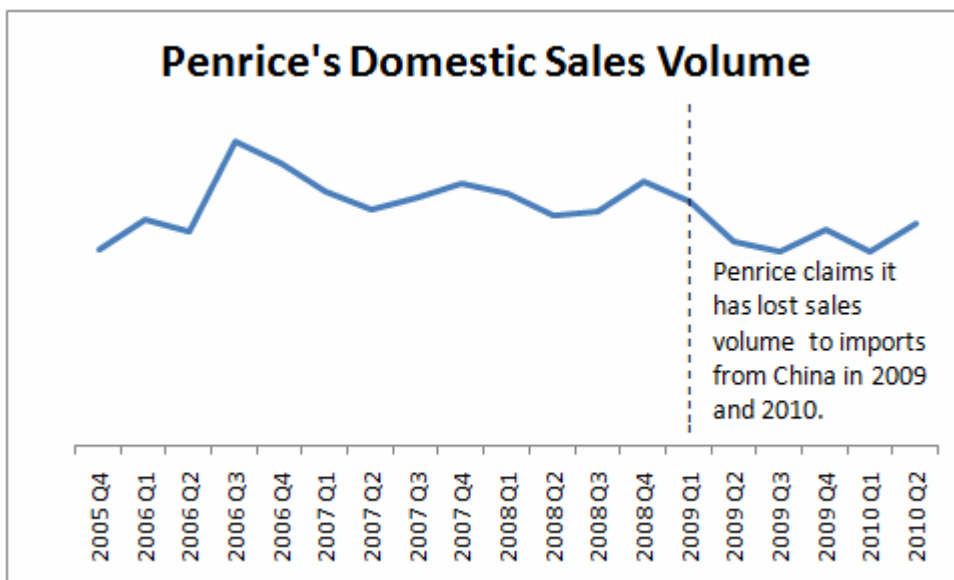
During the review period the goods were dumped and those dumped goods caused material injury to the Australian industry producing like goods.

As set out below, Penrice has lost sales volume and market share, and experienced price undercutting, in 2009 and 2010.

Sales volume

The assessment of sales volume is based on information obtained from Penrice and taken from Customs and Border Protection's import database since measures were imposed.

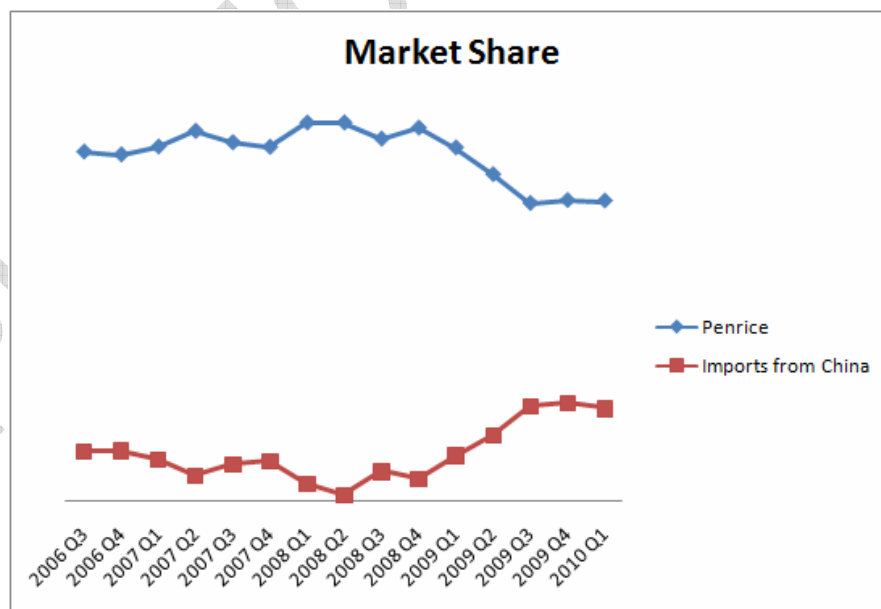
The volume of sodium bicarbonate Penrice sold in the Australian domestic market since measures were imposed in November 2005 is charted below:



Penrice’s domestic sales volume peaked in 2006. In 2007 and 2008 the sales volume fluctuated but generally trended downwards (**confidential attachment 7**). Penrice claims that in 2009 and 2010 it lost sales to imports from China. The chart above shows that in this period Penrice’s sales volumes were lower than in previous years.

Market Share

Penrice’s market share (as a percentage of the total market) and the market share of imports from China over the same period of time are charted below.



This chart shows that imports from China gained market share as Penrice lost market share. During this period imports from sources other than China were negligible. Therefore, Penrice has lost market share and sales volume to imports from China (**confidential attachment 7**).

Price undercutting

A price undercutting analysis was carried out to assess whether imported sodium bicarbonate is sold at a price below that of the Australian industry.

There were two importers/distributors identified that purchased sodium bicarbonate directly from Penrice and from exporters in China. These were the only companies that purchased goods regularly from both sources.

The price undercutting analysis was conducted by comparing Penrice's Free into Store (FIS) price to these customers with the Delivered Duty Paid (DDP) price from exporters in China to these customers using weighted average prices on a month by month basis over the review period. This analysis showed that the price of goods from exporters consistently undercut the price of the Australian industry (**confidential attachment 8**).

In the course of the inquiry, data was also gathered relating to other importers/distributors that did not purchase sodium bicarbonate directly from Penrice. The selling prices from these companies to end users and other customers did not undercut Penrice's prices during the review period (**confidential attachment 8**).

Nevertheless, due to the size of the two importers/distributors that purchased product from both Penrice and exporters, price undercutting during the review period of April 2009 to March 2010 was significant.

7. RECOMMENDATIONS

Customs and Border Protection recommends that the Minister considers this report, and if agreed, sign the attached schedules (**confidential attachment 1 and 2**) and sign the attached public notice (**confidential attachment 3**) to **declare**:

- under s. 269ZDB of the Act, that, for the purpose of the Act and the *Customs Tariff (Anti-Dumping) Act 1975*, to the extent that the anti-dumping measures concerned involved the publication of a dumping duty notice, that, with effect from the date of publication of the notice, the notice is taken to have effect in relation to exporters the subject of this review generally as if different variable factors had been fixed in respect of those exporters, relevant to the determination of duty.

Customs and Border Protection recommends that the Minister **be satisfied** that:

- in accordance with s. 269TAB(3) of the Act, sufficient information has not been furnished or is not available to enable export prices for sodium bicarbonate exported to Australia from China by all exporters the subject of this review to be ascertained under the preceding subsections of s. 269TAB of the Act and;
- in accordance with s. 269TAC(6) of the Act, sufficient information has not been furnished or is not available to enable normal values for sodium bicarbonate exported to Australia from China by all exporters the subject of this review to be ascertained under the preceding subsections of s. 269TAC of the Act.

Customs and Border Protection recommends that the Minister **determine**:

- in accordance with s. 269TAB(3) of the Act, the export prices of sodium bicarbonate for all exports to Australia from China by exporters the subject of this review is the amount having regard to all relevant information and;
- in accordance with s. 269TAC(6) of the Act, the normal value of sodium bicarbonate for all exports to Australia from China for exporters the subject of the review is the amount having regard to all relevant information.

Customs and Border Protection recommends that the Minister **directs**:

- in accordance with s. 269TAC(8) of the Act, in assessing normal value for Inner Mongolia Ihjuchem Industrial Co Ltd, other 'regular' pack exporters and 'specialty' pack exporters that the price paid for like goods be adjusted for differences between domestic and export sales in relation to packaging; transport; handling; and value added tax (VAT).

8. CONFIDENTIAL ATTACHMENTS

Confidential attachment 1	Schedule – determine
Confidential attachment 2	Schedule – direct
Confidential attachment 3	Section 269ZDB public notice
Confidential attachment 4	Normal value, export price and dumping margin calculation summary - Inner Mongolia Ihjuchem Industrial Co Ltd
Confidential attachment 5	Normal value, export price and dumping margin calculation summary – Other ‘regular’ pack and ‘specialty’ pack exporters
Confidential attachment 6	Unsuppressed selling price and non-injurious price calculations
Confidential attachment 7	Volume and market share
Confidential attachment 8	Price undercutting

Appendix 1 - Suitability of Chinese domestic selling prices and Chinese costs for normal value

In its application for the review of anti-dumping measures, Penrice asserted that the level of Government of China ownership and influence in the soda ash industry (through a range of industry policies and taxation concessions) contributed to artificially low Chinese selling prices for soda ash and sodium bicarbonate.³⁸ Penrice considered therefore that domestic selling prices should not be used in determining normal values. Furthermore, Penrice considered that where a cost or expense is identifiable as having been influenced by a Government of China program, that cost or expense should be substituted with a market determined price for the item under consideration.

In a subsequent submission to the review³⁹, Penrice asserted that the costs of coke, electricity and domestic freight, in particular, were material cost elements for sodium bicarbonate that were sold at artificially low prices thereby causing soda ash and sodium bicarbonate prices to be artificially low. Penrice argued that constructed normal values should be used and these should incorporate market selling prices for the costs of coke, electricity and domestic freight charges.

These matters may be relevant considerations in the following contexts:

- assessing whether there was a situation in the Chinese market for sodium bicarbonate such that sales in that market are not suitable for the determination of normal values ('market situation'⁴⁰);
- assessing whether the Chinese exporters' cost of production or manufacture of sodium bicarbonate in China reasonably reflect competitive market costs in China⁴¹.

Market situation

The legislative provision for an assessment of 'market situation' is only relevant to determining normal value using the price paid or payable in the domestic market for sales by the exporters, or other sellers⁴².

In this review, Chinese exporters of sodium bicarbonate did not provide the necessary information within a reasonable period of time⁴³.

In the absence of domestic selling prices as an option for normal value determination, a market situation assessment is not required.

Reasonableness of Chinese costs

Where an exporter keeps records relating to like goods that are in accordance with generally accepted accounting principles in the country of export, and reasonably

³⁸ Penrice application for review of anti-dumping measures, p.7-9

³⁹ Penrice submission of 15 June 2010

⁴⁰ Section 269 TAC(2)(a)(ii) of the *Customs Act 1901*

⁴¹ Customs Regulations 1926 - Regulation 180

⁴² Section 269TAC(1) of the *Customs Act 1901*

⁴³ Customs and Border Protection acknowledges that limited domestic sales information was provided in a timely manner by Qingdao. However, Customs and Border Protection considers this information was unsuitable for use in determining normal values because there was insufficient information upon which to conduct ordinary course of trade tests.

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reflect competitive market costs associated with the production or manufacture of like goods, the Minister must work out the cost of production using information set out in the exporter's records⁴⁴.

In this review, Chinese exporters of sodium bicarbonate did not provide the necessary information within a reasonable period of time⁴⁵.

In the absence of the Chinese exporters' cost and profit data as an option for normal value determination, an assessment of the reasonableness of the Chinese exporters' costs is not required.

⁴⁴ Customs Regulations 1926 - Regulation 180

⁴⁵ Customs and Border Protection acknowledges that limited costing information was provided in a timely manner by Qingdao. However, Customs and Border Protection considers this information was insufficient for use in determining constructed normal values.

Appendix 2 – Coke, salt and electricity costs

Coke

Penrice asserted that the Government of China imposed a 40% export duty on coking coal which resulted in domestic selling prices for the input being up to 40% below international prices⁴⁶.

Penrice also highlighted the effects of export restrictions, including export taxes, with reference to the WTO Trade Review Secretariat that commented:

“However, whether intended or not, export restraints for whatever reason tend to reduce export volumes of the targeted products and divert supplies to the domestic market, leading to a downward pressure on the domestic prices of these products. The resulting gap between domestic and world prices constitutes implicit assistance to domestic downstream processors of the targeted products and thus provides them with a competitive advantage.”⁴⁷

Penrice claims this is directly relevant to the example of coking coal consumed in the manufacture of soda ash and sodium bicarbonate.

Customs and Border Protection accepts that export restrictions such as substantial rates of export tax are likely to reduce export volumes and cause downward pressure on domestic prices for the particular goods in question.

However, the evidence in this case is not sufficient to demonstrate that the prices of coke in China do not reasonably reflect competitive market costs in China. Firstly, the apparent absence of a generally accepted international benchmark price for coke means it is difficult to assess the Chinese coke prices with reference to an arguably reasonable comparison point. Secondly, it is not clear whether or why the coke prices in Europe (submitted by Penrice as a suitable surrogate) were necessarily indicative of the competitive market costs for coke in China in the review period.

Customs and Border Protection considers the CMAI data for coke costs in China, as submitted by Penrice in the application for the review, remains a reasonable basis for coke costs in the constructed normal values.

Salt

Penrice’s assertions in relation to salt were not clear, although Penrice submits that European prices for salt should be used in constructed normal values in place of the Chinese prices for salt.

There is no evidence to demonstrate that the prices for salt in China do not reasonably reflect competitive market costs in China. Customs and Border Protection considers the CMAI data for salt costs in China, as submitted by Penrice in the application for the review, remains a reasonable basis for salt costs in the constructed normal values.

⁴⁶ Penrice submission of 15 June 2010, p.1, supported by a Steel Business Briefing extract.

⁴⁷ World Trade Organisation, Trade Policy Review Body: “Trade Policy Review Report by the Secretariat – China”, WT/TPT/S/230, 26 April 2010.

Electricity

Penrice asserted that the Government of China controls the price of electricity and authorises beneficial prices for certain favoured industries⁴⁸. Penrice referred to a WTO Trade Policy Review paper which stated that "...energy tended to be under-priced"⁴⁹. It also referred to a CMAI Global Soda Ash Service newsletter that confirmed the existence of varying electricity prices throughout China.

The existence of variable electricity prices, whether by region or industry, does not of itself indicate that the prices of electricity in China for sodium bicarbonate producers do not reasonably reflect competitive market costs in China. Similarly, the non-specific reference to under-priced energy is not sufficient basis for a conclusion that the prices of electricity in China for sodium bicarbonate producers do not reasonably reflect competitive market costs in China.

Customs and Border Protection considers the CMAI data for electricity costs in China, as submitted by Penrice in the application for the review, remains a reasonable basis for electricity costs in the constructed normal values.

⁴⁸ Penrice submission of 15 June 2010

⁴⁹ World Trade Organisation, Trade Policy Review Body: "Trade Policy Review Report by the Secretariat – China", WT/TPT/S/230, 26 April 2010, p. 77