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

R E P O R T

CUSTOMS ACT 1901 - PART XVB

**TRADE MEASURES BRANCH
REPORT TO THE MINISTER REP 158**

**REINVESTIGATION OF FINDINGS IN REPORT TO THE
MINISTER REP 138**

**CERTAIN TOILET PAPER
EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA
AND
THE REPUBLIC OF INDONESIA**

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1 ABBREVIATIONS

ABC	ABC Tissue Products Pty Ltd
ACDN	Australian Customs Dumping Notice
AFH	Away From Home
A&J	A&J Australia Pty Ltd
Bunzl	Bunzl Limited
Caprice	Caprice Paper Products
China	People's Republic of China
Coles	Coles Supermarkets Australia Pty Ltd
C&F	Cost and Freight
CMI	PT Cakrawala Mega Indah
CRE	Customs and Border Protection's import database
Customs and Border Protection	The Chief Executive Office of the Australian Customs and Border Protection Service
Deandy	Gallego Pty Ltd, trading as Deandy Packaging
Dongguan Lixinde	Dongguan Lixinde Paper Co., Ltd
Dongguan Zhida	Dongguan Zhida Paper Products Co., Ltd
Encore	Encore Tissue (Aust) Pty Ltd
FOB	Free On Board
Fook Woo	Huizhou Fook Woo Paper Co. Ltd
GHY	Gold Hong Ye Paper (Suzhou Industrial Park) Co Ltd
goods	Goods Under Consideration
Indonesia	The Republic of Indonesia
Injury analysis period	1 January 2004 to 31 December 2007
Investigation period	1 January 2007 to 31 December 2007
Jiangmen	Jiangmen Luck Tissue Mfy Ltd
JSH	John S Hayes and Associates Pty Ltd
KCA	Kimberly-Clark Australia Pty Ltd
Market sector	Retail and AFH
Market sub-sector	Premium, mid-range and economy
Merino	Merino Pty Ltd
Midstate	Midstate Pty Ltd
Minister	Minister responsible for Customs and Border Protection
NIP	Non-Injurious Price
Paper Force	Paper Force (Oceania) Pty Ltd
Pindo Deli	PT Pindo Deli Pulp and Paper Mills
PT Graha	PT Graha Kerindo Utama
REP 138	Trade Measures Report No. 138 – Toilet paper exported from the People's Republic of China and

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	the Republic of Indonesia
SCA	SCA Hygiene Australasia Pty Ltd
SEF	Statement of Essential Facts
Shanghai Clean	Shanghai Clean Paper Co., Ltd
Shantou	Shantou B & S Paper Co., Ltd
the Act	Customs Act 1901
TMRO	Trade Measures Review Officer
US	United States
USP	Unsuppressed Selling Price
VAT	value added tax
Vinda Jiangmen	Vinda Paper (Jiangmen) Co., Ltd
Woolworths	Woolworths Limited
W&D	W&D Industry Co Ltd

2 SUMMARY AND RECOMMENDATIONS

This report provides the results of the reinvestigation by the Chief Executive Officer of the Australian Customs and Border Protection Service (Customs and Border Protection) of all findings in Trade Measures Report No. 138 (REP 138), which resulted in the imposition of anti-dumping duties on certain toilet paper exported to Australia from the People's Republic of China (China) (except Vinda Paper (Jiangmen) Co Ltd (Vinda Jiangmen)) and the Republic of Indonesia (Indonesia).

2.1 Recommendation

In respect of certain toilet paper exported to Australia from China and Indonesia, Customs and Border Protection recommends that the Minister for Home Affairs (Minister¹) revoke the reviewable decision to publish a dumping duty notice, revoke the dumping duty notice and substitute a new decision not to publish a dumping duty notice².

If the Minister accepts this recommendation, to give effect to that decision, the Minister must sign the attached notice at **Appendix 1**.

2.2 Application of law to facts

Division 9 of Part XVB of the *Customs Act 1901*³ sets out procedures for review by the Trade Measures Review Officer (TMRO) of certain decisions made by the Minister.

2.2.1 The role of Customs and Border Protection

Where the Minister has accepted a recommendation by the TMRO that a finding or findings should be reinvestigated, the Minister must, in writing, require Customs and Border Protection to reinvestigate a finding or findings.

Customs and Border Protection is required to make further investigation of the finding or findings, having regard only to the information and conclusions to which the TMRO was permitted to have regard. Customs and Border Protection is required, within a specified period, to report the result of the further investigation to the Minister affirming the finding or findings or setting out any new finding or findings, the evidence or other material on which the new finding or findings are based and the reasons for that decision.

¹ In this report, the term Minister, unless otherwise specified, refers to the Attorney-General. The Minister for Home Affairs has advised that he is unable to exercise powers in this matter and the senior portfolio Minister, the Attorney-General, has indicated that he is the appropriate Minister to receive the report.

² Under s.269TG(2).

³ A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

2.2.2 The role of the Minister

Division 9 empowers the Minister, after receiving the Customs and Border Protection reinvestigation report, to:

- affirm the reviewable decision concerned; or
- revoke that decision and substitute a new decision.

Depending on the Minister's decision⁴, the Minister may⁵:

- publish a dumping duty notice or countervailing duty notice; or
- vary a dumping duty notice or countervailing duty notice; or
- revoke a dumping duty notice or countervailing duty notice and substitute another dumping or countervailing duty notice.

2.2.3 The reviewable decision

In the original investigation, REP 138, Customs and Border Protection concluded there were reasonable grounds to be satisfied that dumping of certain toilet paper exported to Australia from Indonesia and China caused material injury to the Australian industry producing like goods. Customs and Border Protection therefore recommended that the Minister publish a dumping duty notice⁶.

The Minister accepted the recommendations contained in REP 138, including the reasons for the recommendations, the material findings of fact on which the recommendations were based and the evidence relied on to support those findings. To give effect to these recommendations, a dumping duty notice was published on 31 December 2008 imposing dumping duties on certain toilet paper exported to Australia from China (except Vinda Jiangmen) and Indonesia.

The Minister's decision to publish a dumping duty notice is the reviewable decision.

2.2.4 What must be reinvestigated

On 23 June 2009, the Minister directed Customs and Border Protection to reinvestigate all findings⁷ in REP 138 and report the results of the reinvestigation to him by 31 December 2009.

2.2.4.1 Original investigation

REP 138 lists Customs and Border Protection's summary of findings as:

⁴ Under s.269ZZM(1).

⁵ Under s.269ZZM(3).

⁶ Under s.269TG(2).

⁷ Section 269ZX of the *Customs Act 1901* defines findings as "a finding on a material question of fact or on a conclusion based on that fact in relation to reviewable decisions under Subdivision 3 [Review of Ministerial decisions]".

- there is an Australian industry producing like goods to the goods;
- exports of toilet paper from China to Australia were dumped by a margin of 2 percent to 25 percent;
- exports of toilet paper from Indonesia to Australia were dumped by a margin of 33 percent to 45 percent;
- the industry producing like goods has suffered injury in the form of:
 - price undercutting;
 - price depression;
 - price suppression;
 - reduced profits and profitability; and
 - reduced return on investment;
- there is a causal link between the dumped imports and injury to the Australian industry and the injury caused by dumping is material; and
- exports in the future from China and Indonesia are likely to be dumped and material injury to the Australian industry is likely to continue⁸.

These findings formed the basis of the conclusion in the original investigation that there were reasonable grounds to be satisfied that dumping of certain toilet paper exported to Australia from Indonesia and China caused material injury to the Australian industry producing like goods, and the recommendations to the Minister that a dumping duty notice be published.

2.2.4.2 Reinvestigation

For the purposes of this report, the findings made in REP 138 (which resulted in the reviewable decision) have been grouped as follows:

- the goods and like goods;
- Australian market and demand;
- dumping;
- economic condition of the Australian industry;
- has dumping caused material injury; and
- effect of future dumping.

2.2.5 Issues outside the scope of the reinvestigation

There were two matters covered by the TMRO that fall outside the scope of what can be reinvestigated by Customs and Border Protection. The opinions expressed by the TMRO regarding natural justice and the exercise of information gathering powers under s.214B by Customs and Border Protection, are not matters that can be addressed in a reinvestigation. The reasons these matters are outside the scope of the reinvestigation are addressed in Section 5 – *Issues outside the scope of the reinvestigation*.

⁸ Page 4 REP 138 16 December 2008.

2.2.6 Reinvestigation findings and conclusions

Customs and Border Protection has considered all relevant information and conclusions based on relevant information⁹.

Customs and Border Protection concludes that there are reasonable grounds to affirm the following findings:

- there is an Australian industry producing like goods to the goods;
- exports of certain toilet paper from China to Australia were dumped by a margin of 2 percent to 25 percent
- exports of certain toilet paper from Indonesia to Australia were dumped by a margin of 33 percent to 45 percent
- the industry producing like goods suffered injury in the form of:
 - loss of market share in 2007; and
 - price depression.

Customs and Border Protection concludes that there are reasonable grounds to make new findings as follows:

- the industry producing like goods has suffered injury in the form of price undercutting in the retail sector;
- the dumping of toilet paper from China and Indonesia has not caused material injury experienced by the Australian industry; and
- material injury to the Australian industry by dumped imports from China and Indonesia is not foreseeable and imminent.

In summary, Customs and Border Protection considers that:

- the goods exported to Australia from China and Indonesia was dumped; and
- the Australian industry producing like goods suffered injury; but
- the injury experienced by the Australian industry was caused more by other factors than by the dumping of the goods exported from China and Indonesia;
- injury to the Australian industry caused by dumping of the goods exported from China and Indonesia was not material; and

⁹ Under s.269ZZL(2)(a)(i) the reinvestigation can only have regard to the information and conclusions to which the TMRO was permitted to have regard. Section 269ZZK(4) states that the TMRO 'must only have regard to the relevant information [as defined] and conclusions based on relevant information that are contained in the application for the [TMRO] review, or in any submissions received from interested parties within 30 days' of the publication the dumping duty notice. Section 269ZZK(6)(a) defines relevant information as '... the information to which the CEO had had regard, or was... required to have regard, when making findings set out in the report... to the Minister in relation to the making of the reviewable decision'. This is more restrictive than merely excluding new evidence from consideration. It also excludes from consideration any new conclusions. The "conclusions" which the TMRO could consider were set out in the application for review to the TMRO and submissions to the review.

- material injury to the Australian industry by the goods exported to Australia from China and Indonesia is not foreseeable and imminent.

In relation to certain toilet paper exported to Australia from Indonesia and China, Customs and Border Protection therefore recommends that the Minister revoke the reviewable decision to publish a dumping duty notice and substitute a new decision to not publish a dumping duty notice.

Details of the reinvestigation and Customs and Border Protection's reasons for affirming some findings and making new findings are set out in Section 6 – *The goods and like goods* to Section 11 – *Effects of future dumping* of this report.

3 BACKGROUND

3.1 Original Investigation

On 26 March 2008, following assessment of an application¹⁰ made by Kimberly-Clark Australia Pty Limited (KCA) and SCA Hygiene Australasia Pty Ltd (SCA), Customs and Border Protection initiated an investigation into the alleged dumping and subsidisation of certain toilet paper exported to Australia from China and the alleged dumping of certain toilet paper exported to Australia from Indonesia. The commencement of the investigation was notified in *The Australian* newspaper¹¹. Australian Customs Dumping Notice (ACDN) 2008/12¹² was issued on the same day.

The goods under consideration (the goods) are toilet paper in rolls with the following dimensions:

- A maximum sheet width of 120 mm;
- A diameter not exceeding 135 mm; and
- A perforated sheet size of approximately 110 mm x 100 mm.

Parent reels, folded toilet paper and jumbo toilet rolls are excluded from the goods.

The goods are classified to the tariff subheading 4818.10.00 of the *Customs Tariff Act 1995* and statistical code 01. The applicable duty rate for China and Indonesia is 5 percent.

On 24 October 2008, the applicants withdrew the application¹³ for a countervailing duty notice in respect of the goods exported to Australia from China. Customs and Border Protection ceased its investigation concerning the countervailing application and no findings were made in relation to that part of the investigation. ACDN 2008/38 advising interested parties of the

¹⁰ Lodged under s.269TB(1).

¹¹ Under s.269TC(4).

¹² All ACDNs are available on the internet at www.customs.gov.au by following the anti-dumping links.

¹³ Under s.269TB(3).

withdrawal of the allegation of subsidisation of the goods exported to Australia from China was issued on 24 October 2008.

On 3 November 2008, Customs and Border Protection placed SEF 138 on the public record. SEF 138 set out the facts on which Customs and Border Protection proposed to base its recommendations to the Minister.

On 8 December 2008, the investigation in respect of Vinda Jiangmen, a Chinese exporter, was terminated¹⁴. Customs and Border Protection was satisfied that there had been no dumping by Vinda Jiangman of the goods during the investigation period 1 January 2007 to 31 December 2007 (investigation period). The termination was notified in *The Australian*¹⁵ on 10 December 2008. ACDN 2008/44 was also issued on the same day.

On 22 December 2008, the Minister accepted the recommendations contained in REP 138 including the reasons for the recommendations, the material findings of fact on which the recommendations were based and the evidence relied on to support those findings.

The considerations relevant to the determination of material injury to the Australian industry included the size of the dumping margins, the quantity of goods exported from the countries under investigation and the effect of dumped imports on prices in the Australian market in the form of price undercutting, price depression and price suppression, and reduced profits, profitability and rates of return.

To give effect to the acceptance of Customs and Border Protection's recommendations, the Minister published a dumping duty notice¹⁶ imposing dumping duties on the goods exported to Australia from China (except Vinda Jiangmen) and Indonesia from 1 January 2009. Notice of the Minister's decision was published in *The Australian* and the *Commonwealth Government Special Notices Gazette* No. S292 and S293 on 31 December 2008. ACDN 2008/51 was also issued on the same day.

3.2 Review of a Ministerial decision by TMRO

In accordance with Division 9 of Part XVB, the TMRO may review certain decisions by the Minister, including decisions to publish a dumping duty notice¹⁷. TMRO reviews are conducted only on application from relevant interested parties¹⁸.

In making his recommendation to the Minister, the TMRO is only to have regard to "relevant information"¹⁹ and any conclusions in applications and

¹⁴ Under s.269TDA(1).

¹⁵ In accordance with s.269TDA(15).

¹⁶ Under s.269TG(2).

¹⁷ Under s.269TG(2).

¹⁸ As defined in s.269ZX.

¹⁹ In accordance with s.269ZZK(6).

submissions to the TMRO review based on the relevant information. In short, the TMRO must only have regard to the information available to Customs and Border Protection during the course of the original investigation, information contained in REP 138 and applications and submissions to the TMRO review²⁰. The information in the application for review and submissions to the review to which the TMRO may have regard is also limited to conclusions based on the relevant information.

3.2.1 Applications to TMRO

Interested parties had until 30 January 2009 to lodge an application for review of the Ministers decision with the TMRO. The TMRO received an application for review from the following interested parties:

- A&J Australia Pty Ltd (A&J);
- Caprice Paper Products (Caprice);
- Gallego Pty Ltd, trading as Deandy Packaging (Deandy);
- Gold Hong Ye Paper (Suzhou Industrial Park) Co Ltd (GHY);
- John S Hayes and Associates Pty Ltd (JSH);
- PT Pindo Deli Pulp and Paper Mills (Pindo Deli);
- W&D Industry Co Ltd (W&D); and
- Woolworths Pty Ltd (Woolworths).

3.2.2 TMRO review process and decision

The TMRO published a notice²¹ in the *Australian Financial Review* on 20 March 2009, advising that he would conduct a review and inviting interested parties to make submissions to the review by 19 April 2009 (30 days from notification).

The TMRO received submissions from:

- Trade Development Resources, 4 February 2009;
- Dr Whitwell, 12 February 2009;
- Pindo Deli, 6 April 2009²²;
- KCA and SCA, 16 April 2009;
- GHY and Pindo Deli, 16 April 2009; and
- the Government of Indonesia, 16 April 2009²³.

The report by the TMRO to the Minister recommended that all the findings in REP 138 be reinvestigated. A finding²⁴ in relation to a reviewable decision means a finding on a material question of fact or on a conclusion based on

²⁰ In accordance with section 269ZZK(4).

²¹ Under s.269ZZI.

²² Pindo Deli submission to the TMRO 6 April 2009.

²³ Government of Indonesia submission to the TMRO 16 April 2009.

²⁴ As defined under s.269ZX.

that fact. Not all of the particulars of the individual findings to be reinvestigated were set out in the TMRO report²⁵.

On 23 June 2009, the Minister accepted the TMRO's recommendations and directed Customs and Border Protection to reinvestigate all findings in REP 138 and report to him by 31 December 2009.

Copies of public applications and submissions to the review are available from the TMRO. The TMRO's Report is available from the Attorney-General's Department website, www.ag.gov.au.

On 1 July 2009, a notice²⁶ was published in *Commonwealth Government Gazette* No. GN 25 advising the Minister's acceptance of the TMRO's recommendations and the reinvestigation requirements.

3.3 Reinvestigation by Customs and Border Protection

Customs and Border Protection published ACDN 2009/22 and 2009/23 notifying details of the reinvestigation procedures. These ACDN advised that:

- the reinvestigation can only have regard to the information and conclusions to which the TMRO was permitted to have regard;
- no new information or conclusions may be considered in a reinvestigation;
- all relevant information is in the public domain and is available to interested parties through the public record of the original investigation or the public record of the review maintained by the TMRO; and
- the report of the reinvestigation must be provided to the Minister by 31 December 2009.

3.3.1 The reviewable decision

As noted in Section 2.2.3 – *The reviewable decision*, the reviewable decision in this instance is the Minister's decision to publish a dumping duty notice²⁷.

3.3.2 Submissions received in relation to the reinvestigation

During the reinvestigation, Customs and Border Protection received submissions from:

- GHY and Pindo Deli;
- KCA;
- KCA and SCA;
- the Government of Indonesia;
- Mr Fry; and

²⁵ Section 269ZZK(2)(b) requires that the TMRO must, if recommending that a finding or findings be reinvestigated—set out the finding or findings.

²⁶ Under s.269ZZL(2)(b).

²⁷ Under s.269TG(2).

- Woolworths.

As these submissions fall outside the scope of information and conclusions to which the TMRO was permitted to have regard, Customs and Border Protection did not have regard to these submissions in the reinvestigation.

3.4 The reinvestigation report

The following sections of this report set out Customs and Border Protection's:

- reinvestigation methodology;
- reasons for considering that some matters referred to by the TMRO could not be reinvestigated;
- further investigation of the information and conclusions to which the TMRO was permitted to have regard;
- reinvestigation of the findings central to the original recommendation to the Minister;
- conclusions on whether the original findings should be affirmed or new findings made;
- evidence or other material on which the findings of the reinvestigation are based; and
- the reasons for the recommendation to the Minister in relation to the reviewable decision.

4 REINVESTIGATION METHODOLOGY

In conducting a reinvestigation, Customs and Border Protection must have regard only to information and conclusions to which the TMRO was permitted to have regard²⁸. That is, relevant information and conclusions based on relevant information.

Relevant information is from Customs and Border Protection's original investigation and includes information such as the original application, submissions to the original investigation, visit reports, SEF 138, submissions to SEF 138 and REP 138.

Conclusions based on relevant information is conclusions based on the relevant information contained in applications for TMRO review and submissions received by the TMRO within 30 days of notification of the review.

The Minister's direction to Customs and Border Protection and the report by the TMRO did not set out the particulars of the individual findings to be reinvestigated but referred to all findings. Customs and Border Protection has used the TMRO report to guide the focus of the reinvestigation.

The principal matters identified from the TMRO report that can be reinvestigated are:

- like goods, including the retail and away from home (AFH) sectors;
- basis for export price and normal value for Chinese exporter W&D;
- normal value determination as a result of sampling exporters for investigation;
- normal value level of trade adjustment for Indonesian exporter Pindo Deli and Chinese exporter GHY;
- volume of exports from Indonesia;
- status of applicants in relation to the Australian industry as a whole for the assessment of injury; and
- cause of injury.

Customs and Border Protection examined documents from the original investigation (relevant information) and applications and submissions to the TMRO received within the specified timeframes (conclusions based on relevant information) for the purposes of the conducting the reinvestigation.

²⁸ Section 269ZZL(2)(a)(i).

5 ISSUES OUTSIDE THE SCOPE OF THE REINVESTIGATION

5.1 Natural Justice

In his report, the TMRO expressed the view that “natural justice was denied to Woolworths and most likely, other persons who were involved in the investigation”²⁹.

Issues of natural justice are relevant to judicial, rather than merits, review. They are beyond the scope of this reinvestigation.

While there is no scope to make any finding as to whether or not natural justice was afforded to interested parties during the original investigation, the reinvestigation does provide an opportunity for Customs and Border Protection to re-examine substantive concerns raised by interested parties throughout the investigation as well as conclusions based on relevant information contained in applications and submissions to the TMRO.

5.2 Reference to s.214B

The TMRO referred to the powers available to Customs and Border Protection under s.214B to require certain parties to produce accounts and manufacturing records. This reference was made in relation to deficiencies the TMRO perceived in relation to data obtained from one non-applicant Australian industry member, ABC Tissue Products Pty Ltd (ABC)³⁰.

As regard can only be had to the information and conclusions to which the TMRO was permitted to have regard, it is not possible for Customs and Border Protection to use s.214B to collect additional information from ABC in the context of a reinvestigation³¹.

²⁹ Paragraph 42 page 8 TMRO Report 14 May 2009.

³⁰ Paragraphs 22-26 pages 4-5 TMRO Report 14 May 2009.

³¹ Customs and Border Protection notes that while the original investigation did not have access to, and therefore could not verify, all information in relation to the Australian industry that could possibly be made available, this is commonly the case. In practice, perfect information is the exception rather than the rule and the legislative framework clearly reflects this reality (e.g. in making provision for a representative sample of the Australian industry to make an application and for the sampling of exporters). The decision that has to be made in every case is whether the information that is available is sufficiently representative to allow reasonable conclusions to be drawn on the injurious effect of dumped goods on the Australian industry as a whole.

6 THE GOODS AND LIKE GOODS

6.1 Summary of reinvestigation findings

Customs and Border Protection considered all relevant information and conclusions based on relevant information, and affirms the following original findings:

- the goods are toilet paper in rolls with dimensions of:
 - a maximum sheet width of 120mm;
 - a diameter not exceeding 135mm; and
 - a perforated sheet size of approximately 110mm x 100mm;
- the goods excludes parent rolls, folded toilet paper and jumbo toilet rolls;
- there is an Australian industry producing like goods to the goods;
- the Australian industry producing like goods to the goods consists of KCA, SCA, ABC and Encore Tissue (Aust) Pty Ltd (Encore).

Customs and Border Protection makes the following new findings:

- there are no other exclusions to the goods on the basis of price, quality, grade or the market sector (AFH or retail) or market sub-sector (premium, mid-range or economy) they are destined for; and
- there are no exclusions to like goods on the basis of price, quality, grade or the market sector (AFH or retail) or market sub-sector (premium, mid-range or economy) they are destined for.

6.2 Focus of the reinvestigation

The findings on a material question of fact, or on a conclusion based on that fact, in relation to the goods and like goods which are to be reinvestigated, include:

- what are the goods covered by the investigation (Section 6.3);
- what goods manufactured by the Australian industry are “like” to the goods (Section 6.4); and
- what companies make up the Australian industry manufacturing the like goods (Section 6.5).

6.3 Goods under consideration (the goods)

The initiation notice of the investigation, published in *The Australian* on 26 March 2008, defined the goods as having the following dimensions:

- A maximum sheet width of 120 mm;
- A diameter not exceeding 135 mm; and
- A perforated sheet size of approximately 110 mm x 100 mm.

Parent reels, folded toilet paper and jumbo toilet rolls are excluded from the goods. The goods are classified to tariff subheading 4818.10.00, statistical code 01 in Schedule 3 of the *Customs Tariff Act 1995*.

The description of the goods was drawn from the application by KCA and SCA which described the goods by reference to width, diameter, sheet size, and generally in white or printed form.

6.3.1 The reinvestigation (the goods)

The goods are defined in the application for a dumping duty notice based on a description of the goods that the applicants allege are being dumped and causing injury to the Australian industry.

A description that is too narrow may not provide an effective remedy if measures are imposed, and a description that is too ambiguous might expand the scope of the investigation to include other unaffected Australian industry participants or to encompass other products that are not being dumped and/or subsidised. Any exclusions to the goods should also be advised in the application.

In practice, exclusions that can be made in a description of the goods, and in eventual anti-dumping measures, include:

- the exclusion of particular exporters; and
- the exclusion of products by reference to objective physical characteristics.

6.3.1.1 Exclusions from the goods

While the original application stated that it was intended to cover all variants of the imported *Select* brand toilet tissue marketed by Woolworths, the only exclusions to the goods were parent reels, folded toilet tissue and jumbo toilet rolls. These goods were excluded by reference to objective physical characteristics (i.e. sheet width, diameter and sheet size which fall outside the description of the goods).

Submissions were made by interested parties that factors such as price, quality, number of ply and composition of the product (e.g. made from recycled material), should exclude the goods they imported from the goods.

Interested parties also contended that toilet paper products sold into the AFH sector should be excluded from the goods. Interested parties asserted that their imports did not compete with the Australian industry in the AFH sector and that this sector had not been specified in the application.

Customs and Border Protection has established that the only descriptive factors in the definition of the goods are sheet width, diameter and sheet size. There is no reference in the definition of the goods that could reasonably support a finding other than that all imported toilet paper products falling within the description as set out in the initiation notice are the goods.

Therefore, Customs and Border Protection considers that imported toilet paper products which meet the description of the goods by reference to sheet width, diameter and sheet size, regardless of the market sector (AFH or retail)

or market sub-sector (premium, mid-range or economy) they are destined for, are the goods.

Imported toilet paper products which fall into the description of the goods include, for example, Woolworths *Select* (said to be a premium product), Woolworths *Homebrand* (said to be an economy product), A&J's recycled toilet paper and Deandy's sales of imported toilet paper to the AFH sector.

Customs and Border Protection concludes that the description of the goods covers imported toilet paper products destined for both the retail and AFH sectors and the premium, mid-range and economy sub-sectors.

The separate issue of whether toilet paper products manufactured by the Australian industry are like goods to the goods is assessed in Section 6.4 – *Like goods* below.

6.3.1.2 Like goods

Throughout the original investigation, and in the application to the TMRO³², Woolworths submitted that the *Homebrand* product it imported, and economy products generally, should not be considered like goods.

Customs and Border Protection notes that as Woolworths' *Homebrand* product is imported, there is no requirement to assess whether it is a like good to the goods. As noted above, *Homebrand* falls within the definition of the goods by reference to sheet width, diameter and sheet size.

The issue of whether economy, mid-range and premium products manufactured by Australian industry are like goods to the goods is assessed at Section 6.4 – *Like goods*.

6.3.2 Reinvestigation conclusion (the goods)

Customs and Border Protection concludes that the description of the goods:

- covers toilet paper in rolls with dimensions of:
 - a maximum sheet width of 120mm;
 - a diameter not exceeding 135mm;
 - a perforated sheet size of approximately 110mm x 100mm;
- excludes parent rolls, folded toilet paper and jumbo toilet rolls.

Customs and Border Protection also concludes that there are no other exclusions to the goods on the basis of price, quality, grade or the market sector (AFH or retail) or market sub-sector (premium, mid-range or economy) they are destined for.

Customs and Border Protection affirms the following original findings, in relation to the goods, that:

³² Page 4 Woolworths' application to TMRO 29 January 2009.

- the goods are toilet paper in rolls with dimensions of:
 - a maximum sheet width of 120mm;
 - a diameter not exceeding 135mm; and
 - a perforated sheet size of approximately 110mm x 100mm;
- the goods excludes parent rolls, folded toilet paper and jumbo toilet rolls.

Customs and Border Protection makes a new finding, in relation to the goods, that:

- there are no other exclusions to the goods on the basis of price, quality, grade or the market sector (AFH or retail) or market sub-sector (premium, mid-range or economy) they are destined for.

In making these decisions, Customs and Border Protection had regard to all relevant information and conclusions based on relevant information as outlined in Section 4 - *Reinvestigation Methodology*.

6.4 Like goods

Section 269T sets out the definition of like goods as:

'in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling the goods under consideration.'

6.4.1 The reinvestigation (like goods)

In the preceding section, Customs and Border Protection concluded that the description of the goods:

- covered toilet paper in rolls with dimensions of:
 - a maximum sheet width of 120mm;
 - a diameter not exceeding 135mm; and
 - a perforated sheet size of approximately 110mm x 100mm.

Customs and Border Protection also concluded that the only exclusions from the goods were parent rolls, folded toilet paper and jumbo toilet rolls.

To assess whether the goods manufactured by the Australian industry are like to the goods (identical or have characteristics closely resembling each other), Customs and Border Protection focussed on the following criteria³³:

- physical likeness (e.g. size, shape, content, weight, appearance, grade, standards, strength and purity);
- commercial likeness (e.g. do the goods compete in the same market sector);

³³ Chapter 4 Customs and Border Protection Dumping and Subsidy Manual August 2007.

- functional likeness (i.e. same end use). While end-use will not of itself establish whether goods are like goods, it may highlight differences or support an assessment based on physical or commercial likeness;
- production likeness. While a comparison of production processes will not of itself establish whether goods are like goods, it may highlight differences or support an assessment based on other considerations; and
- other matters (e.g. matters raised by interested parties and matters identified by Customs and Border Protection during the course of the investigation).

These considerations may carry different weights depending on the circumstances of a particular case. However, physical likeness is emphasised.

6.4.1.1 Physical likeness

Based on the description of the goods, at the highest level, the products manufactured by the Australian industry are identical to the goods (i.e. they are toilet paper products in rolls with specified maximum sheet and roll dimensions).

On the criterion of physical likeness, when examining the specifications of individual products, Customs and Border Protection considers that toilet paper products manufactured by the Australian industry are not identical to the goods. However, Customs and Border Protection concludes they do fall within the maximum dimensions specified in the description of the goods and therefore has physical characteristics closely resembling the goods.

6.4.1.2 Commercial likeness

The inclusion of the AFH sector in the overall investigation of the goods was disputed by many parties with various issues being raised such as quality, which sector companies sell into and the type of goods sold into the AFH sector.

The division of the toilet paper market into two sectors, retail and AFH, is well accepted within the market. Importer visit reports confirm the split in the market with JSH stating that the product sold in the AFH sector was generally longer (double in length) than the retail sector as it saves cleaners replacing stock³⁴.

Applications to the TMRO relevant to the issue of the inclusion of retail and AFH sectors as like goods were made by Caprice, A&J and Deandy.

Caprice's application to the TMRO stated that it sells only to the AFH sector and believed that the investigation solely affected the retail sector³⁵. A&J's application to the TMRO stated that the applicants can not represent the

³⁴ Page 9 JSH Visit Report May 2008.

³⁵ Page 1 Caprice application to the TMRO 30 January 2009.

market it is servicing (AFH) and that their exporter never sold any products to the retail sector³⁶. Deandy's application to the TMRO states that it only imports products for the AFH sector and that the quality of stock imported is from low end to very high quality³⁷.

Customs and Border Protection notes that both applicants manufacture toilet paper products for the retail sector. One applicant, KCA, manufactures toilet paper products for the AFH sector. The other applicant, SCA, imported toilet paper products for the AFH sector. Customs and Border Protection notes that toilet paper products manufactured by KCA for the AFH sector fall within the maximum dimensions specified in the description of the goods. There is also evidence that Australian produced toilet paper competes with the goods in the AFH sector.

Customs and Border Protection considers that while there is a division in the toilet paper market into the AFH and retail sectors, toilet paper products manufactured by the Australian industry for both of these sectors are like to the goods.

On the criterion of commercial likeness, Customs and Border Protection concludes that the toilet paper manufactured by the Australian industry, while not identical to the goods, has a high degree of commercial likeness to the goods.

6.4.1.3 Functional likeness

While Customs and Border Protection recognises that there are different qualities of toilet paper within the description of the goods, and the toilet paper products manufactured by Australian industry, their end-use is identical.

Quality

Woolworths submits that there is clear market segmentation between the economy and premium/mid-range levels³⁸. Woolworths refers to quality (including ply) as being a key differentiating factor between premium and economy brand toilet paper products.

Ply

The Woolworths visit report states that "*premium and mid-range product cannot be compared with a generic [economy] product as there are significant and measurable quality differences... which appeal to completely different consumers*"³⁹. In support of this statement, Woolworths also stated that that the *Homebrand* product is only 2 ply, whereas 'the others' (presumably premium and mid-range products) are either 3 or 4 ply⁴⁰.

³⁶ Pages 4-5 A&J application to the TMRO 28 January 2009.

³⁷ Page 4 Deandy application to the TMRO 7 January 2009.

³⁸ Page 2 Woolworths Submission 21 November 2008.

³⁹ Page 18 Woolworths Visit Report May 2008.

⁴⁰ Page 18 Woolworths Visit Report May 2008.

The Huizhou Fook Woo Paper Co. Ltd (Fook Woo) visit report states that Fook Woo manufactures a 1 ply product for Woolworths destined for the low or budget end of the Australian market (i.e. economy). The visit report also notes that Woolworths' *Select* brand is a 4 ply product made from virgin material that competed with the applicant's products in the premium end of the Australian market⁴¹.

A submission by Midstate Pty Ltd (Midstate) stated that it usually sells 2 ply toilet paper, but sometimes sells 1 ply toilet paper, into the AFH sector of the market. Midstate suggested that 1 ply and 2 ply toilet paper should be exempt from the investigation⁴².

Applications to the TMRO relevant to the issue of the inclusion of economy, mid-range and premium products as like goods were made by Woolworths and A&J.

In the application to the TMRO, Woolworths restated its claims made during the original investigation regarding quality. A&J's application to the TMRO submitted that the applicants do not manufacture any recycled toilet paper, which is the pulp that A&J use, so the products are not comparable⁴³.

Examination of the available information shows that the ply difference highlighted by Woolworths between premium and economy toilet paper is not readily applicable to other brands of premium and economy toilet paper. By comparison, KCA's premium product is 1 ply, its mid-range product 2 or 3 ply and the economy product 1 ply while SCA's premium and mid-range product both are 2 ply and its 'Private Label' brand, which is said to be sold into both the retail and AFH market is 3 ply.

Customs and Border Protection considers that while the number of ply can be an indication of quality, comparison of the four main products in the premium market are all of different ply. Tables in SEF 138 showed that premium product comes in 1, 2, 3 and 4 ply; mid-range product comes in 2 or 3 ply and the Australian industry's economy product comes in 1 ply⁴⁴.

Customs and Border Protection considers that ply is not a factor which can be consistently or separately identified as a differentiating characteristic between the goods and the toilet paper manufactured by the Australian industry.

Other quality factors

Customs and Border Protection identified that other references to quality included words such as:

- superior softness, strength, absorbency, thickness (application); and

⁴¹ Page 39 Fook Woo Visit Report July 2008.

⁴² Pages 1-2 Midstate submission to SEF 24 November 2008.

⁴³ Page 5 A&J application to the TMRO 28 January 2009.

⁴⁴ Pages 21-22 SEF 138 November 2008.

- thick, strong, super soft, smooth texture (market research).

In its submission to SEF 138, Woolworths asserted that “*there is a substantial difference in quality and performance of [economy brands] compared to premium and mid-range brands*”⁴⁵.

Customs and Border Protection considers that quality is a consumer perception dependent on a number of factors and is difficult to define. While it is reasonable to accept that consumers of toilet paper perceive different brands in terms of their quality (softness, absorbency, thickness etc), standard quality information is not used to describe or define product and is not disclosed on the packaging. Without a readily identifiable standard, there is no objective measurable way of differentiating the toilet paper sold as premium, mid-range and economy products – it is all toilet paper.

The original investigation categorised the current range of brands on the market according to the sub-sector they were marketed as - premium, mid-range or economy. On reinvestigation, Customs and Border Protection considers that establishing the market through this method for future reference is questionable as the original categorisation relied on marketing strategies not on common distinct characteristics for each sub-sector.

On the criterion of functional likeness, Customs and Border Protection concludes that quality is not a reliable indicator to distinguish between market sectors (retail and AFH) or market sub-sectors (premium, mid-range or economy). Customs and Border Protection further concludes that the toilet paper manufactured by the Australian industry, while not identical to the goods, has a high degree of functional likeness to the goods.

6.4.1.4 Production likeness

The production likeness assessment is based on information gathered from domestic and overseas manufacturers during the course of the original investigation.

Woolworths made submissions on this issue. The Woolworths visit report contains a statement by Woolworths that the *Homebrand* product being 2 ply and ‘the others’ 3 or 4 ply reflects a difference in manufacturing processes. However, in a subsequent submission, Woolworths states that the production processes of *Homebrand* and *Select Brand* products are broadly similar⁴⁶.

The toilet paper manufacturers examined during the original investigation used a variety of pulp (e.g. softwood, hardwood and recycled) as the raw materials in the manufacturing process. Midstate’s submission to SEF 138 indicated that imported products can also be manufactured using cane sugar, bamboo and elephant grass⁴⁷.

⁴⁵ Page 2 Woolworths submission to SEF 21 November 2008.

⁴⁶ Page 3 Woolworths submission to the original investigation 3 June 2008.

⁴⁷ Page 1 Midstate submission to SEF 24 November 2008.

In A&J's application to the TMRO, recycled toilet paper is referred to which could be taken to mean that it is not manufactured wholly from softwood or hardwood pulp but A&J does not provide any details in relation to potential manufacturing differences⁴⁸.

Another factor related to production identified during the investigation was the different weight of rolls. The Australian industry and exporter visit reports confirmed the detail of the roll size and weight of various brands to be between 140g and 280g per roll for the goods and between 77g and 196g per roll for the toilet paper manufactured by the Australian industry.

Customs and Border Protection examined whether the weight difference in rolls was indicative of a production difference that would cause the toilet paper manufactured by the Australian industry which fell well outside the weight range of the goods to not be like goods.

Customs and Border Protection considers that the weight difference can be attributed to the variety of pack sizes and lengths available (e.g. single standard packs, 8-roll standard pack, 4-roll double length packs) and also that different technologies (e.g. dry crepe and through air dried) produce different weights. The result at the end of the production process is toilet paper with sheet and roll sizes that fall within the maximum dimensions indicated by the description of the goods.

On the criterion of production likeness, Customs and Border Protection concludes that the toilet paper manufactured by the Australian industry, while not identical to that of the goods, has a high degree of production likeness to the goods in that they are manufactured using similar materials and methods and result in the same general product.

6.4.2 Reinvestigation conclusion (like goods)

Customs and Border Protection concludes that the toilet paper manufactured by the Australian industry, while not identical in all respects to the goods, has characteristics closely resembling the goods.

This conclusion is based on the evidence that supported positive conclusions in relation to the physical, commercial, functional and production likeness between the toilet paper manufactured by the Australian industry and the goods.

Customs and Border Protection also concludes that there are no exclusions to the like goods on the basis of the market sector (AFH or retail) or market sub-sector (premium, mid-range or economy) they are destined for.

⁴⁸ Page 5 A&J application to TMRO 28 January 2009 and paragraph 16 in the TMRO Report 14 May 2009.

Customs and Border Protection affirms the following original finding, in relation to like goods, that:

- there is an Australian industry producing like goods to the goods.

Customs and Border Protection makes a new finding, in relation to like goods, that:

- there are no exclusions to the like goods on the basis of the market sector (AFH or retail) or market sub-sector (premium, mid-range or economy) they are destined for.

In making these decisions, Customs and Border Protection had regard to all relevant information and conclusions based on relevant information as outlined in Section 4 - *Reinvestigation Methodology*.

6.5 Australian industry producing like goods

In Section 6.4 – *Like goods* of this report, Customs and Border Protection found that there is an Australian industry producing like goods to the goods. However, the matter to be addressed in this section is what companies make up the Australian industry.

Customs and Border Protection notes that the composition of the Australian industry is relevant to the assessment of injury in Section 9 – *Economic condition of the Australian industry*.

6.5.1 The reinvestigation (Australian industry)

In the original application, it was claimed that the Australian industry for toilet paper consisted of five members being the applicants (KCA and SCA), ABC, Merino Pty Ltd (Merino) and Encore.

During the course of the investigation, Customs and Border Protection established that the Australian industry producing toilet paper at that time comprised only KCA, SCA, ABC and Encore. Information available to Customs and Border Protection is that Encore acquired the Merino business in early 2008.

There were no applications or submissions to the TMRO disputing the finding by Customs and Border Protection that the Australian industry comprised KCA, SCA, ABC and Encore. The issue raised by some interested parties is that they do not consider the applicants themselves are sufficiently representative of the Australian industry for the purposes of conducting an injury assessment. This issue is examined in Section 9 – *Economic condition of the Australian industry*.

6.5.2 Reinvestigation conclusion (Australian industry)

Customs and Border Protection examined the available evidence and concludes that:

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- the toilet paper manufactured or produced by KCA, SCA, ABC and Encore are like goods;
- the like goods were wholly or partly manufactured in Australia;
- a substantial process of manufacture was carried out in Australia by KCA, SCA, ABC and Encore; and
- the Australian industry producing like goods in Australia consists of KCA, SCA, ABC and Encore.

Customs and Border Protection affirms the following original finding, in relation to the Australian industry producing like goods that:

- the Australian industry producing like goods to the goods consists of KCA, SCA, ABC and Encore.

In making this decision, Customs and Border Protection had regard to all relevant information and conclusions based on relevant information as outlined in Section 4 - *Reinvestigation Methodology*.

7 AUSTRALIAN MARKET AND DEMAND

7.1 Summary of reinvestigation findings

Customs and Border Protection considered all relevant information and conclusions based on relevant information and affirms the following original findings:

- there are two sectors in the toilet paper market – retail and AFH;
- there are three sub-sectors in the retail sector – premium, mid-range and economy; and
- sub-sectors in the AFH sector could not be differentiated.

Customs and Border Protection makes the following new findings:

- the imported 'Tork' brand sold by SCA into the AFH sector be included in the table of major brands and suppliers;
- data from the scanned retail sales reports be used to construct the retail sector of the toilet paper market;
- sufficient reliable information is not available to construct the AFH sector of the toilet paper market;
- the size of the AFH sector is between 10 to 20 percent of the size of the retail sector; and
- insufficient information is available to construct the total toilet paper market during the injury analysis period 1 January 2004 to 31 December 2007 (injury analysis period).

7.2 Focus of the reinvestigation

The findings on a material question of fact, or on a conclusion based on that fact, in relation to the Australian market and demand for toilet paper which are to be reinvestigated include:

- how the market operates (Section 7.3);
- the major brands and suppliers in the market (Section 7.4); and
- size of the market and import sources (section 7.5).

7.3 Market sectors

Customs and Border Protection considers there is sufficient evidence to support the view that the Australian toilet paper market comprises two distinct market sectors, retail and AFH. The two applicants both referred to these sectors, as did importers. No interested party made any submissions disputing the identification of the two markets.

The two sectors operate in the toilet paper market as follows:

- retail – sales to retailers for on-sale to consumers; and
- AFH – commercial sales to hotels, offices, schools and other such organisations.

7.3.1 Retail sector

The applicants categorise locally manufactured toilet paper into premium, mid-range and economy grades within the retail sector. The original application stated that the different categories are distinguishable according to quality, superior softness, strength, absorbency and thickness.

Customs and Border Protection found in Section 6 – *The goods and like goods* that quality is not a reliable indicator to distinguish between market sectors (retail and AFH) or market sub-sectors (premium, mid-range or economy) and there are no exclusions to the goods or like goods on this basis.

Customs and Border Protection concludes that the retail sector comprises three sub-sectors – premium, mid-range and economy (which fall within the description of the goods and like goods).

7.3.2 AFH sector

Evidence in relation to the existence of sub-sectors in the AFH sector is not clear. The information gathered by Customs and Border Protection indicates that the AFH sector covers at least premium and economy sub-sectors but the information available did not facilitate analysis of the different sub-sectors.

Submissions from interested parties in relation to the AFH sector focussed on whether the AFH sector should fall within the scope of the investigation, rather than the operation of the sector.

Customs and Border Protection concludes that sub-sectors in the AFH sector could not be differentiated.

7.3.3 Quality in sectors and sub-sectors

The original investigation addressed quality as a possible market delineation factor for the market sectors and retail sub-sectors. Customs and Border Protection found in Section 6 – *The goods and like goods* that distinguishing the toilet paper market on the basis of brand placement relied on marketing strategies and price points, not on common distinct characteristics for each sector or retail sub-sector.

Customs and Border Protection concludes that while there do not appear to be clear identifiable quality differences between the toilet paper products sold into each of the sectors and retail sub-sectors, this is how the toilet paper market works. Information on how the different toilet paper brands are categorised in the toilet paper market is important for assessing injury to the Australian industry and whether that injury is caused by dumping of the goods.

7.3.4 Reinvestigation conclusion (market sectors)

Customs and Border Protection concludes that:

- there are two sectors in the toilet paper market – retail and AFH;

- there are three sub-sectors in the retail sector – premium, mid-range and economy; and
- sub-sectors in the AFH could not be differentiated.

Customs and Border Protection affirms the following original findings, in relation to market sectors, that:

- there are two sectors in the toilet paper market – retail and AFH;
- there are three sub-sectors in the retail sector – premium, mid-range and economy; and
- sub-sectors in the AFH could not be differentiated.

In making these decisions, Customs and Border Protection had regard to all relevant information and conclusions based on relevant information as outlined in Section 4 – *Reinvestigation Methodology*.

7.4 Major brands and suppliers in the market

Customs and Border Protection examined all the available information and considers that an additional brand – ‘Tork’ – imported by SCA for sale to the AFH sector was of sufficient volume to qualify as a major brand. A table of the major brands and suppliers follows:

Retail sector

Sub-Sector	Supplier		Brand
Premium	Australian industry	ABC	Quilton
		KCA	Kleenex and You’ll Love Coles
		SCA	Sorbent
	Importers	Woolworths	Select
		Paper Force	Paseo
Mid range	Australian industry	ABC	Naturale and Softly
		Encore & Merino	Bouquets, Envirosoft and Safe
		KCA	Wondersoft
		SCA	Purex
Economy	Australian industry and importers		Bi-Lo, Black & Gold, Coles Smart Buy and No Frills
	Importer	Woolworths	Homebrand

AFH sector

Sub-Sector	Supplier		Brand
All	Australian industry	Encore & Merino	Merino', Earthwise and Elite
		KCA	Scott and Kimdri
	Importers	Bunzl Limited (Bunzl)	Executive Premium and Premium
		Caprice	Not publicly available
		Financial Raising Pty Ltd	Green Dolphin, Casy and Elise
		JSH	Regal and Trusoft
		Paper Force	Livi, Premium, Mayfair, Milestone and Ultrasoft
		SCA	Tork

Applications and submissions to the TMRO did not focus on the identification of the brands and suppliers in the Australian toilet paper market.

7.4.1 Reinvestigation conclusion (major brands and suppliers)

Customs and Border Protection concludes that the volume of the 'Tork' brand sold by SCA into the AFH sector should be included in the table of major brands and suppliers.

The reinvestigation makes a new finding, in relation to the major brands and suppliers in the market, that:

- the imported 'Tork' brand sold by SCA into the AFH sector be included in the table of major brands and suppliers;

In making this decision, Customs and Border Protection had regard to all relevant information and conclusions based on relevant information as outlined in Section 4 - *Reinvestigation Methodology*.

7.5 Market size

Customs and Border Protection does not consider that the method used in the original investigation utilised the most relevant data. For this reason, this section of the report has been structured to show:

- the data sources available to Customs and Border Protection (Section 7.5.1);
- the process followed to construct the market in the original investigation (Section 7.5.2); and
- Customs and Border Protection's assessment of the method used in the original investigation and how the market was constructed in the reinvestigation (Section 7.5.3).

7.5.1 Data sources (market size)

Information available to construct the Australian market for toilet paper is:

- data from Customs and Border Protection's import database (CRE) for all importations against the relevant tariff classification;
- data verified at visits; and
- scanned retail sales reports sourced from an independent data agency service for the period 2004 to 2007. The data provided to Customs and Border protection showed the volume (including pack size, number of rolls sold and roll weight) and value of retail sales for each toilet paper brand in the Australian market.

7.5.2 Original investigation (market size)

7.5.2.1 Import volumes and sources

The starting point for import volumes in the original investigation was data from CRE for 2004 to 2007. As the tariff classification includes goods other than the goods, imports with a description that was identifiable as not the goods were removed from the dataset. The resultant CRE data for all individual importers was provided to those companies to confirm the details of the shipments. The 2007 data for certain importers was verified at visits.

China

For the importers visited, the quantity (weight) of goods imported in 2007 was calculated as a proportion of the total imports for that importer. The individual results were applied to the total CRE data for that importer in each of the preceding years. Overall the result was that 98 percent of the 2007 imports verified were the goods.

On the basis of the verified results, the original investigation included the remainder of the imports from China (that is, imports by importers not visited) identified in the CRE data as possibly being the goods, as the goods.

Indonesia

A similar methodology was used to calculate the quantity of imports from Indonesia. Overall the result was that in 2007 the goods accounted for 88 percent of the total imports of the goods in the tariff classification.

Other countries

Imports from countries other than China and Indonesia were calculated by deducting from total imports recorded in CRE, the quantities identified as origin China and Indonesia as well as imports by the Australian industry.

7.5.2.2 Australian industry volumes

Sales volumes (weight) for the applicants, KCA and SCA were verified at visits. The remainder of the Australian industry, ABC and Encore, did not provide details of their sales volumes. The original investigation used the brand and weight information from the scanned retail sales reports for the

period 2004 to 2007 to represent sales by these companies into the retail sector. Customs and Border Protection was unable to estimate sales of toilet paper products by ABC and Encore into the AFH market.

7.5.3 The reinvestigation (market size)

Applications and submissions to the TMRO did not question the market size (based on volume) assessed in the original investigation. In the context of injury, applications to the TMRO did comment that scanned retail reports are reputedly inaccurate⁴⁹.

In relation to the total Australia toilet paper market size, the original investigation found that the market volume increased by approximately 25 percent over the period 2004 to 2007, with the AFH sector maintaining approximately a 14 percent share of the total Australian toilet paper market⁵⁰. The original investigation found that the retail sector had shown significant growth (approximately 22 percent).

The reinvestigation detected a minor error in the calculations resulting in a reduction of 0.1 percent in the total toilet paper market for each of the years. Correction of this error did not significantly change the overall retail/AFH sector split or the overall market shares of the Australian industry, China, Indonesia and other countries.

7.5.3.1 Retail sector

Assessment of the method used in the original investigation

Market volume for the retail sector in the original investigation was based on a combination of data from the applicants and importers, scanned retail sales reports for the remaining two members of the Australian industry and CRE data. Sales by the importers for 2004, 2005 and 2006 were allocated against total imports recorded in CRE based on the verification of 2007 data.

Customs and Border Protection considers the finding that growth of 25 percent in the retail sector occurred over the period 2004 to 2007 is not supported by evidence from Australian industry members who each suggest that growth was moderate⁵¹. The Australian industry members used scanned data to estimate the retail sector market volume. In addition, the check of the data underlying the market construction used in the original investigation showed that SCA's sales of imported toilet paper to the AFH sector were incorrectly attributed to the retail sector. This significance of this error is discussed further in Section 7.5.3.2 – *AFH sector* below.

⁴⁹ Page 9 Pindo Deli application to TMRO 19 January 2009 and page 6 GHY application to TMRO 19 January 2009.

⁵⁰ Page 26 REP 138 16 December 2008.

⁵¹ Page 17 KCA visit report May 2008, page 16 SCA visit report April 2008, page 10 ABC visit report July 2008.

Method used for the retail sector in the reinvestigation

Having re-examined all the available information, Customs and Border Protection considers that a more accurate measure of sales to the retail sector is to base it on the data available from the scanned retail sales reports for the period 2004 to 2007.

While the scanned retail sales reports do not cover 100 percent of the retail sector, Customs and Border Protection considers that the customer base included in the data captures a significant proportion of sales into that sector and is sufficiently representative of that sector. In reaching this conclusion, the comments made in applications to the TMRO regarding the accuracy of the scanned retail reports⁵² was considered. Comparison of the verified weight of toilet paper sold by the applicants against the weight recorded in the scanned retail sales reports does not show a significant difference. Use of this data will also provide a consistent source for the timing of sales into the retail sector. Growth in the retail sector over the period 2004 to 2007, when constructed using scanned retail sales reports and weight as the unit for calculations, is 14 percent.

Customs and Border Protection also considered the most appropriate unit measurement for estimating market volume. Weight was used in the original investigation, information from one interested party was provided in per 10,000 sheets and data from the scanned retail sales reports was available in weight, pack size and number of rolls.

The measure of weight used in the original investigation does not represent a reliable measure of the volume of toilet paper in the market. This is because not all rolls are equally weighted – the weights differ according to construction including factors such as the number of sheets per roll, the number of ply per sheet and the fibre mixture of the sheet.

Customs and Border Protection is of the view that the optimal measure would be a standard unit of 10,000 sheets however the data available on that basis is insufficient to frame market volume. Assessing all the available information Customs and Border Protection concludes that the market is best represented in number of rolls.

The available information shows that the Australian industry had estimated the scanned retail data as covering about 84 percent of total sales of toilet paper. While the scanned retail data covers sales of the major retailers such as Coles Supermarkets Australia Pty Ltd (Coles) and Woolworths, it does not cover, for example, Aldi and pharmacies. The retail sector of the toilet paper market has been estimated in the reinvestigation using this information and by accounting for the additional sales estimates. An adjustment factor was applied to each sub-sector of the retail sector. When constructed using scanned retail sales reports, accounting for the additional sales estimates,

⁵² Page 9 Pindo Deli application to TMRO 19 January 2009 and page 6 GHY application to TMRO 19 January 2009.

and rolls as the unit for calculations, growth in the retail sector over the period 2004 to 2007 is 11 percent.

The growth of 11 percent over the injury analysis period (measured in rolls), is not as great as the growth found in the original investigation, and closer to the views offered by the Australian industry members. One possible reason that the growth using scanned retail sales reports data is still greater than the population growth is that, over time, smaller retailers have been bought out by larger retailers such as Woolworths, Franklins or IGA, resulting in more retail data being incorporated into the scanned retail sales reports data. As the reinvestigation was only able to have regard to relevant information and conclusions based on relevant information, other possible explanations as to why the 11 percent growth was higher than moderate growth estimates of the Australian industry could not be assessed.

7.5.3.2 AFH sector

Assessment of the method used in the original investigation

Market volume for the AFH sector in the original investigation was estimated using a combination of data from one applicant and CRE data. It is noted that the majority of the AFH import data was constructed from the residual of the estimated import data after the retail sector was deducted.

Applicant data

Customs and Border Protection found that the Australian industry in the AFH sector only included KCA's sales of local production. As referred to above in relation to Section 7.5.3.1 - *Retail sector* above, SCA's sales of imported AFH product were incorrectly attributed to the retail sector. The volume of these imports is significant. Further, no data was included for the remaining Australian manufacturers (ABC and Encore). ABC estimated its sales into this sector as having been about 10 percent of its total production and sales⁵³. Using the weight of the quantity sold in the retail sector from scanned data reports as the basis, the volume that ABC could be selling in the AFH sector would be significant.

These omissions from the constructed AFH sector during the original investigation has led to the sales by the Australian industry (of manufactured or imported toilet paper) into the AFH sector being significantly understated.

Customs and Border Protection notes that AFH sector participants considered the market was growing by 2 percent to 3 percent per annum⁵⁴.

CRE data

Customs and Border Protection also examined the data used as the basis for constructing the non-verified portion of the AFH sector from CRE. Tariff subheading 4818.10 contains all toilet paper in rolls up to 36cm in width and

⁵³ Page 7 ABC Visit Report July 2008.

⁵⁴ Page 16 KCA visit report May 2008, page 16 SCA visit report April 2008 and page 6 Paper Force visit report (Confidential Attachment 1) July 2008.

toilet paper in sheets (i.e. the tariff subheading is far broader in scope than the goods).

The original investigation sought to refine this data to the goods only, primarily using the description of the goods entered in CRE to refine the data. Customs and Border Protection examined the CRE data for its suitability to estimate this portion of the AFH sector. The reinvestigation found:

- the goods descriptions in CRE contained a significant proportion of generic or incomplete descriptions;
- there was a significant spread of unit values;
- there were a very large number of importers that entered goods under the subheading; and
- verification of import data other than for the retail sector was limited.

Customs and Border Protection could not be satisfied with the accuracy of the accuracy of the CRE data for making a reliable estimation of the non-verified portion of the AFH sector.

Method used for the AFH sector in the reinvestigation

Having considered all the available information, Customs and Border Protection is of the view that the estimation of the AFH sector in the original investigation cannot be relied upon for estimating the toilet paper market size. Customs and Border Protection also notes that there is no independent sale information for the AFH sector comparable to the scanned retail sales reports data available for the retail sector. Customs and Border Protection concludes that that a reliable reconstruction of the AFH sector is not possible with the information available.

While Customs and Border Protection has concluded that sufficient reliable information is not available to construct the AFH sector, an estimate of the relative sizes of the AFH and retail sectors can be made.

The applicants individually provided an estimate of the relative sizes of the retail and AFH sectors and some information as to the potential size of the AFH sector can be estimated from verification visits to Australian industry and importers. This information excludes one Australian industry member and the non-verified portion of imports. Based on this estimate, the Australian industry constitutes a large proportion of the AFH sector.

From the limited data available, the AFH sector appears to be much smaller than the retail sector – between approximately 10 and 20 percent of the size of the retail sector.

7.5.4 Reinvestigation conclusion (market size)

Customs and Border Protection concludes that:

- market volume is best represented by standard rolls;
- the retail sector should be constructed using the information available from the scanned retail sales reports;

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- sufficient reliable information is available to make conclusions about import volumes, import sources, and market share for the retail sector of the toilet paper market;
- the estimate of the AFH sector in the original investigation cannot be relied upon;
- a reliable reconstruction of the AFH sector is not possible with the information available, but the size of the AFH sector is between 10 to 20 percent of the size of the retail sector;
- insufficient information is available to construct the total toilet paper market during the injury analysis period.

Customs and Border Protection makes new findings, in relation to market size, that:

- data from the scanned retail sales reports be used to construct the retail sector of the toilet paper market;
- sufficient reliable information is not available to construct the AFH sector of the toilet paper market;
- the size of the AFH sector is between 10 to 20 percent of the size of the retail sector; and
- insufficient information is available to construct the total toilet paper market during the injury analysis period.

In making these decisions, Customs and Border Protection had regard to all relevant information and conclusions based on relevant information as outlined in Section 4 - *Reinvestigation Methodology*.

8 DUMPING

8.1 Summary of reinvestigation findings

The reinvestigation has considered all relevant information and conclusions based on relevant information and decided that the goods exported to Australia from Indonesia and China (except Vinda Jiangmen) are dumped at margins that are not negligible and in volumes that are not negligible.

The following individual original findings are affirmed:

Indonesia (Export price)

- where the sales are directly between Pindo Deli and the importer, export price can be established under s.269TAB(1)(a);
- where the sales are not between Pindo Deli and the importer, the Minister can determine export price for Pindo Deli in accordance with s.269TAB(1)(c), having regard to all the circumstances of the exportations;
- in accordance with s.269TAB(3), the Minister can be satisfied that sufficient information has not been furnished or is not available to enable the export price of toilet paper exported to Australia from Indonesia by exporters (other than Pindo Deli), to be ascertained under the preceding subsections of s.269TAB; and
- in accordance with s.269TAB(3), the Minister can determine the export price of toilet paper exported from Indonesia by exporters (other than Pindo Deli) having regard to all relevant information;

Indonesia (Normal Value)

- normal values for Pindo Deli can be established in accordance with s.269TAC(1); and
- the Minister can determine that the normal value for Pindo Deli incorporate adjustments to account for differences between domestic and export sales for domestic inland freight, export inland freight, domestic credit, export credit and shelf rental expense. The adjustments are in accordance with s.269TAC(8);
- in accordance with s.269TAC(6), the Minister be satisfied that sufficient information has not been furnished or is not available to enable the normal value of toilet paper exported to Australia from Indonesia by exporters (other than Pindo Deli), to be ascertained under the preceding subsections of s.269TAC; and
- in accordance with s.269TAC(6), the Minister determine normal value of toilet paper exported from Indonesia by exporters (other than Pindo Deli), having regard to all relevant information;
- there is no evidence that the inputs to toilet paper production in Indonesia did not reflect normal competitive market costs associated with the production of toilet paper;

China (Export price)

- the Minister can determine export price for GHY in accordance with s.269TAB(1)(c), having regard to all the circumstances of the exportations;
- where the sales are between Fook Woo and Merino, the export price can be established under s.269TAB(1)(a);
- where the sales are not between Fook Woo and Merino, the Minister can be satisfied, in accordance with s.269TAB(3), that sufficient information has not been furnished or is not available to enable the export price of toilet paper exported to Australia from China by Fook Woo, to be ascertained under the preceding subsections of s.269TAB; and
- in accordance with s.269TAB(3), the Minister can determine the export price of toilet paper exported from China by Fook Woo having regard to all relevant information;
- in accordance with s.269TAB(3), the Minister can be satisfied that sufficient information has not been furnished or is not available to enable the export price of toilet paper exported to Australia from China by residual exporters and other selected exporters, to be ascertained under the preceding subsections of s.269TAB; and
- in accordance with s.269TAB(3), the Minister can determine the export price of toilet paper exported from China by residual exporters and other selected exporters having regard to all relevant information;

China (Normal value)

- normal values for GHY can be established in accordance with s.269TAC(1); and
- the Minister can determine that the normal value for GHY incorporate adjustments to account for differences between domestic and export sales for export expenses, export credit, value added tax (VAT), domestic credit, domestic transportation and warehousing, domestic promotion expenses, difference in salespersons salaries, difference in regional sales office expenses and bad debt. The adjustments are in accordance with s.269TAC(8);
- in accordance with s.269TAC(2)(a)(i), the Minister can be satisfied that due to the absence or low volume of sales in the ordinary course of trade in the domestic market of China by Fook Woo, normal values for Fook Woo cannot be established under s.269TAC(1);
- the Minister can determine, in accordance to s.269TAC(2)(c), the cost of production for toilet paper by Fook Woo, and on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade, determine the SG&A costs associated with the sale and any profit on the sale; and
- the Minister can determine that the normal value for Fook Woo incorporate adjustments to account for differences between domestic and export sales for domestic inland transport and handling charges to the Free-On-Board level and for VAT credit on export (certain

transactions only). The adjustments are in accordance with s.269TAC(9);

- in accordance with s.269TAC(6), the Minister can be satisfied that sufficient information has not been furnished or is not available to enable the normal value of toilet paper exported to Australia from China by residual exporters and other selected exporters, to be ascertained under the preceding subsections of s.269TAC; and
- the Minister can determine normal value of toilet paper exported from China by residual exporters and other selected exporters in accordance with s.269TAC(6), having regard to all relevant information;

Dumping

- in accordance with s.269TACB(2)(a), the Minister can be satisfied in respect of exports of the goods from Indonesia and China (except Vinda Jiangmen) that the weighted average of export prices of toilet paper over the investigation period is less than the weighted average of corresponding normal values over the investigation period; and
- the dumping margin of goods dumped by all exporters from Indonesia and all exporters from China (except Vinda Jiangmen), is not negligible; and
- the volume of dumped goods exported from Indonesia and exported from China is not negligible when expressed as a percentage of the total Australian import volume.

8.2 Focus of the reinvestigation

The findings on a material question of fact, or on a conclusion based on that fact, in relation to dumping of the goods from Indonesia and China which are to be reinvestigated, include:

- import volumes (Section 8.3);
- determination of export price and normal value, including adjustments to normal value, and the respective dumping margins for exports from Indonesia (Section 8.4); and
- determination of export price and normal value, including adjustments to normal value, and the respective dumping margins for exports from China (Section 8.5).

8.3 Import volumes

At Section 7.5.3 – *The reinvestigation (Market size)*, Customs and Border Protection could not be satisfied with the accuracy of the CRE data for making a reliable estimation of the non-verified portion of the AFH sector, however, Customs and Border Protection is satisfied that overall the CRE information, assessed in light of the verified import information, is reliable for estimating the total volume of imports of the goods.

Customs and Border Protection has estimated the volume of imports of the goods to be in the order of 20, 000 tonnes.

8.4 Indonesia

During the original investigation, Customs and Border Protection visited several importers involved in importing toilet paper products into Australia. Data was collected and verified in relation to imports and sales, and visit reports were produced. The reports included qualified recommendations on export price for consideration by the case team.

Customs and Border Protection visited Pindo Deli, the only Indonesian exporter to provide a satisfactorily completed questionnaire, to determine export prices and normal values for the goods.

Limited information was provided by another Indonesian exporter, PT Graha Kerindo Utama (PT Graha).

8.4.1 Pindo Deli

Pindo Deli is a manufacturer and exporter of toilet paper sold to Australia and is part of the APP Group of companies.

Pindo Deli's application for review and submission to the TMRO made assertions relevant to normal value from the perspective of the ordinary course of trade analysis and adjustments to the normal value for level of trade and the margin of the domestic sales intermediary. These matters were also raised by Pindo Deli in the original investigation.

8.4.1.1 Export price (Pindo Deli)

Customs and Border Protection reviewed the information in relation to export price and considers that Pindo Deli is the exporter.

Where Pindo Deli has exported the goods to Australia and the goods have been purchased from Pindo Deli by the importer in an arms length transaction, Customs and Border Protection considers that the export price can be established under s.269TAB(1)(a).

Where Pindo Deli has exported the goods to Australia but the goods have not been purchased from Pindo Deli by the importer in an arms length transaction the export price cannot be established under s.269TAB(1)(a). However, after examining the circumstances of these sales, Customs and Border Protection considers that all the circumstances of the sales are known and that the Minister can determine the export price for those goods under s.269TAB(1)(c). Having regard to all the circumstances of the exportation the export price can be calculated using the invoiced price less the charges incurred 'post-free on board (FOB)'.

8.4.1.2 Normal value (Pindo Deli)

Customs and Border Protection has reviewed the information in relation to the calculation of normal values for Pindo Deli.

Customs considers that normal values for Pindo Deli can be established using domestic sales by PT Cakrawala Mega Indah (CMI), its associated reseller⁵⁵.

Ordinary course of trade

Pindo Deli's application and submission to the TMRO asserted that the ordinary course of trade analysis to determine which domestic sales were suitable for the purpose of normal value should be conducted in respect of all sales of like goods, without regard to the level of trade or to other differences.

To determine if sales were in the ordinary course of trade⁵⁶, the selling price for each transaction has been compared to the corresponding cost to make and sell for those goods. For those sales found to be sold at a loss, the selling price of the individual sale was compared to the weighted average cost to make and sell of those goods over the whole of the investigation period to ascertain whether the sale was recoverable within a reasonable period. In summary:

- all sales were profitable and recoverable; however, while
- profitable and recoverable sales to the modern market were of sufficient quantity for all sales to be suitable for normal value consideration;
- profitable and recoverable sales to the distributor level were not of sufficient quantity for all sales to be suitable for normal value consideration and only profitable sales can be considered for that purpose.

Customs and Border Protection considers that applying the corresponding cost to make and sell against the relevant level of trade is correct and that the ordinary course of trade test has been correctly applied.

Adjustments

The original investigation adjusted the normal value⁵⁷ for domestic inland freight, export inland freight, domestic credit, export credit and shelf rental expense. No adjustment was made for level of trade or CMI's sales margin.

Level of trade

Pindo Deli's application and submission to the TMRO asserted that sales to Paper Force (Oceania) Pty Ltd (Paper Force), where Woolworths was the customer, should be compared to domestic sales to distributors, not modern market. Pindo Deli claimed the goods were sold to Paper Force who then on sold them to Woolworths and that Paper Force performed the functions of a distributor and that these export sales should be compared to domestic sales to the distributor level. A similar submission was made to the TMRO by the Government of Indonesia.

Where the export sales are between Pindo Deli and the importer, Customs and Border Protection is satisfied that the importer performs the functions of a

⁵⁵ In accordance with s.269TAC(1).

⁵⁶ In accordance with s.269TAAD.

⁵⁷ Under s.269TAC(8).

distributor and has compared those export sales with domestic sales to the distributor level.

For export sales by Pindo Deli involving both Paper Force and Woolworths, Customs and Border Protection considers that Paper Force acted as an agent and did not perform any of the functions of a distributor. While the purchasing arrangement passed through Paper Force, that company had a very limited role in the transaction. Woolworths took control of the goods immediately on arrival in Australia and arranged distribution in Australia. Accordingly, Customs and Border Protection has compared export sales transactions involving both Paper Force and Woolworths with domestic sales to the modern market level.

As the comparison of export price and normal value has been undertaken at the relevant levels, Customs and Border Protection does not consider that an adjustment to normal value is required for level of trade.

CMI's sales margin

Pindo Deli submitted that CMI's domestic prices included a sales margin. It claimed that this covered expenses such as the maintenance of a sales force, regional sales offices, regional warehouses, promotion and advertising expenses. Pindo Deli claimed there was no such sales margin in respect of Pindo Deli's exports to Australia and that a downward adjustment to the normal value was warranted.

To make an adjustment for an intermediary's sales margin, Customs and Border Protection must be satisfied that the involvement of the intermediary gave rise to a difference that affected price comparability between export price and normal value, not simply that there was a difference in costs.

Customs and Border Protection has established that:

- CMI performed the domestic selling function for domestic sales of Pindo Deli's paper products (including toilet paper); and
- CMI were not involved in providing any sales related services in respect of Pindo Deli's exports of toilet paper to Australia.

Customs and Border Protection has made a downward adjustment for shelf rental expenses incurred in respect of domestic sales to the modern market as it is satisfied that the expense would affect price comparability and similar expenses were not incurred in respect of exports to Australia.

Pindo Deli were invited on a number of occasions to identify and quantify any additional expenses that may have been incurred and to provide evidence why these costs might affect price comparability between export price and normal value. Pindo Deli has not provided the information required.

Customs and Border Protection considers that adjustment for CMI's sales margin, other than for shelf rental expenses incurred in respect of domestic sales to the modern market, is not warranted.

Adjustments summary

Customs and Border Protection considers that adjustments⁵⁸ are only required for domestic inland freight, export inland freight, domestic credit, export credit and shelf rental expense.

8.4.1.3 Dumping margin (Pindo Deli)

Pindo Deli (along with GHY and Paper Force) submitted in response to SEF 138 that the timing comparison of export price and normal value for calculating the dumping margin in respect of some of its exports was not made at [or] as nearly as possible, the same time⁵⁹.

After considering the available evidence in relation to the tender awarded to Paper Force by Woolworths, Customs and Border Protection considers that the invoice date is the most appropriate date to use for the comparison of export prices and normal values.

Dumping margins have been determined for the investigation period by comparing weighted average export prices to weighted average normal values⁶⁰.

The dumping margin calculated for Pindo Deli is in the range of 33 percent to 38 percent. The dumping margin is not negligible⁶¹.

8.4.1.4 Reinvestigation conclusion (Pindo Deli)

Customs and Border Protection has reviewed the calculation of export price, normal values and dumping margin for Pindo Deli. It considers that the correct methodologies were used and that the calculations are accurate.

Particularly, Customs and Border Protection considers that the ordinary course of trade test has been correctly applied, no adjustment to normal value is required for level of trade and that no further adjustment is warranted for CMI's sales margin.

Customs and Border Protection affirms the original findings, in relation to exports to Australia by Pindo Deli, that:

- export price can be established under s.269TAB(1)(a) for export sales directly between Pindo Deli and the importer;
- where the sales are not between Pindo Deli and the importer, the Minister can determine export price in accordance with s.269TAB(1)(c), having regard to all the circumstances of the exportations;
- normal values for Pindo Deli can be established in accordance with s.269TAC(1); and

⁵⁸ Under s.269TAC(8).

⁵⁹ Pindo Deli, GHY and Paper Force submission to SEF 138 24 November 2008.

⁶⁰ Under s.269TACB(2)(a).

⁶¹ Under s.269TDA(1).

- the Minister can determine that the normal value for Pindo Deli incorporate adjustments to account for differences between domestic and export sales for domestic inland freight, export inland freight, domestic credit, export credit and shelf rental expense. The adjustments are in accordance with s.269TAC(8);
- in accordance with s.269TACB(2)(a), the Minister can be satisfied that the weighted average of export prices of toilet paper over the investigation period is less than the weighted average of corresponding normal values over the investigation period in respect of exports of the goods from Pindo Deli; and
- the dumping margin of goods dumped by Pindo Deli is not negligible.

In making this decision, Customs and Border Protection had regard to all relevant information and conclusions based on relevant information as outlined in Section 4 – *Reinvestigation Methodology*.

8.4.2 Other Indonesian exporters

Applications and submissions to the TMRO did not refer to export prices, normal value or dumping margins for other Indonesian exporters.

8.4.2.1 Export price (other Indonesian exporters)

Customs and Border Protection identified exports from Indonesia by other exporters during the investigation period from its commercial database. It also obtained some limited pricing information from one of the other Indonesian exporters (PT Graha).

Customs and Border Protection considers that sufficient information has not been furnished or is not available to enable the export price of toilet paper exported to Australia from Indonesia by exporters (other than Pindo Deli) to be ascertained under s.269TAB(1).

In the original investigation, export price was determined for exporters from Indonesia (other than Pindo Deli) having regard to all relevant information⁶². Customs and Border Protection considers the use of pricing data from PT Graha was not unreasonable.

8.4.2.2 Normal value (other Indonesian exporters)

Sufficient information has not been furnished or is not available to enable the normal value of toilet paper exported to Australia from Indonesia by exporters (other than Pindo Deli) to be established using domestic sales⁶³ or under s.269TAC(2).

Customs and Border Protection considers that the information obtained from Pindo Deli is relevant to determining normal values for the other Indonesian

⁶² Under s.269TAC(6).

⁶³ Under s.269TAC(1).

exporters. Normal values for Indonesian exporters (other than Pindo Deli) can be determined having regard to all relevant information⁶⁴.

8.4.2.3 Dumping margins (other Indonesian exporters)

Dumping margins for other Indonesian exporters (other than Pindo Deli) have been determined for the investigation period by comparing weighted average export prices to weighted average normal values⁶⁵.

The dumping margin calculated for other Indonesian exporters (other than Pindo Deli) is in the range of 40 percent to 45 percent. The dumping margin is not negligible⁶⁶.

8.4.2.4 Reinvestigation conclusion (other Indonesian exporters)

Customs and Border Protection has reviewed the calculation of export price, normal values and dumping margins for Indonesian exporters (other than Pindo Deli) and considers that correct methodologies were used and that the calculations are accurate.

Customs and Border Protection affirms the original findings, in relation to exports to Australia by other Indonesian exporters, that:

- in accordance with s.269TAB(3) the Minister can:
 - be satisfied that sufficient information has not been furnished or is not available to enable the export price of toilet paper exported to Australia from Indonesia by exporters (other than Pindo Deli), to be ascertained under the preceding subsections of s. 269TAB; and
 - determine the export price of toilet paper exported from Indonesia by exporters (other than Pindo Deli) having regard to all relevant information;
- in accordance with s.269TAC(6) the Minister can:
 - be satisfied that sufficient information has not been furnished or is not available to enable the normal value of toilet paper exported to Australia from Indonesia exporters (other than Pindo Deli), to be ascertained under the preceding subsections of s.269TAC; and
 - determine normal value of toilet paper exported from Indonesia by exporters (other than Pindo Deli), having regard to all relevant information;
- in accordance with s.269TACB(2)(a), the Minister can be satisfied that the weighted average of export prices of toilet paper over the investigation period is less than the weighted average of corresponding normal values over the investigation period in respect of exports of the goods by Indonesian exporters (other than Pindo Deli); and

⁶⁴ Under s.269TAC(6).

⁶⁵ Under s.269TACB(2)(a).

⁶⁶ Under s.269TDA(1).

- the dumping margin of goods dumped by Indonesian exporters (other than Pindo Deli) is not negligible.

In making this decision, Customs and Border Protection had regard to all relevant information and conclusions based on relevant information as outlined in Section 4 – *Reinvestigation Methodology*.

8.4.3 Market situation in Indonesia

Applications and submissions to the TMRO did not refer to a market situation existing in Indonesia.

In the original investigation, the applicants alleged that a market situation for toilet paper existed in Indonesia due to the impact of government policies on raw material timber and pulp production which resulted in lower costs of production than would have otherwise occurred in normal market conditions. They concluded that government influence has resulted in artificially low prices in Indonesia.

In broad terms, if 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 s.269TAC(1), the normal value of goods exported to Australia cannot be ascertained under s.269TAC(1)⁶⁷.

Examination of the available information revealed no evidence that inputs did not reflect normal competitive market costs associated with production of the toilet paper.

8.4.3.1 Reinvestigation conclusion (market situation in Indonesia)

Customs and Border Protection has reviewed the information available in relation to costs and pricing of toilet paper in Indonesia and considers that there is no evidence that the situation in the market in Indonesia is such that sales in Indonesia are not suitable for use in determining that relevant domestic selling prices are suitable for the purpose of normal value.

Customs and Border Protection affirms the original findings, in relation to the market situation in Indonesia, that:

- there is no evidence that the inputs to the toilet paper production in Indonesia did not reflect normal competitive market costs associated with the production of toilet paper.

In making this decision, Customs and Border Protection had regard to all relevant information and conclusions based on relevant information as outlined in Section 4 – *Reinvestigation Methodology*.

⁶⁷ Section 269TAC(2)(a)(ii).

8.4.4 Volume of dumped goods from Indonesia

The Government of Indonesia claimed that the volume of imports from Indonesia represented 0.46 percent of the total Australian import volume⁶⁸, that the volume of dumped imports was negligible and that the investigation should have been terminated immediately in so far as it relates to Indonesia.

Customs and Border Protection notes that the Government of Indonesia's calculation of negligible volume is incorrect. That calculation used the total Australian market, not the total Australian import volume, as the denominator.

To determine whether the volume of goods dumped from Indonesia was negligible, Customs and Border Protection compared the volume of dumped exports from Indonesia and the total Australian import volume for the goods⁶⁹. The volume of dumped goods exported from Indonesia in the investigation period was not negligible as it was in excess of 3 percent.

8.4.4.1 Reinvestigation conclusion (volume of dumped goods from Indonesia)

Customs and Border Protection concludes that grounds did not exist for terminating the investigation in so far as it related to Indonesia on the basis of the volume of dumped goods being negligible.

The reinvestigation affirms the original finding, in relation to volume of dumped goods from Indonesia, that:

- the volume of dumped goods exported from Indonesia is not negligible when expressed as a percentage of the total Australian import volume.

In making this decision, Customs and Border Protection had regard to all relevant information and conclusions based on relevant information as outlined in Section 4 - *Reinvestigation Methodology*.

8.5 China

Prior to the Minister making the reviewable decision, the investigation was terminated in so far as it related to Chinese exporter - Vinda Jiangmen. Therefore the reinvestigation does not further examine Vinda Jiangmen's details.

8.5.1 Selection and sampling

The legislation and policy supporting Customs and Border Protection's application of the sampling provisions of the legislation is included in the following analysis.

⁶⁸ Government of Indonesia submission to TMRO 16 April 2009.

⁶⁹ Under s.269TDA(4).

Provision is available⁷⁰ that, if the number of exporters providing information in relation to an application (cooperating exporters) is so large that it is not practicable to determine the existence of dumping and to work out individual dumping margins for each of them, a number of the cooperating exporters may be sampled. If sampling is undertaken, the remaining (i.e. non-sampled) cooperating exporters are regarded as residual exporters for the purposes of the investigation. The results from the sampled exporters inform the calculation of export price and normal value for the residual exporters.

The legislation specifies the term 'residual exporters' and establishes the method that must be used to ascertain a normal value and export price in relation to those companies.

The term 'residual exporter'⁷¹ refers to an exporter of goods the subject of the application other than:

- a selected exporter; and
- a new exporter of such goods.

For a residual exporter, the normal value must not exceed the weighted average of normal values for like goods of selected exporters from the same country of export. The export price must not be less than the weighted average of export prices for like goods of selected exporters from the same country of export⁷². This requirement is further qualified⁷³ to exclude the information from the selected exporters if:

- there is no dumping or the dumping margin is less than 2 percent; or
- the normal value or the export price of the selected exporter was determined having regard to all relevant information⁷⁴.

For any selected exporters that do not cooperate (other selected exporters), the calculation of export price and normal value is not prescribed in the legislation.

8.5.1.1 Selection and sampling in this case

Due to the potentially large number of exporters of the goods from China, all 158 companies identified were sent a preliminary information request to ascertain if the companies exported the goods.

The preliminary information request sent to the Chinese companies invited each company to participate in the investigation and explained that sampling would be likely and the procedures that would be followed. It also made clear the possible results and consequences of any sampling.

⁷⁰ Section.269TACB(8).

⁷¹ Section 269T.

⁷² Section 269TG(3B).

⁷³ Section 269TG(3C).

⁷⁴ Section 269TAC(6) and s.269TAB(3) respectively.

The issuing of the preliminary information request selected all the companies as potential exporters. Forty six companies responded to the preliminary information request, and of these, 34 indicated cooperation. Customs and Border Protection subsequently advised non-cooperating exporters that normal values would be determined on the facts available.

Twelve companies (the sample) were selected from the 34 cooperating companies on the basis of trade volume. One company later withdrew cooperation. In summary:

- 33 companies indicated they would cooperate with Customs and Border Protection in the investigation;
- 11 cooperating companies were sampled as representative of the cooperating companies;
- the remaining 22 not sampled cooperating companies became 'residual exporters' for the purpose of the investigation; and
- the remaining 125 companies were non-cooperative and not 'residual exporters'.

The sampled exporters visited were GHY, Fook Woo and Vinda Jiangmen along with their associated traders/suppliers.

8.5.2 GHY

GHY is a manufacturer and exporter of toilet paper sold to Australia and is part of the APP Group of companies.

GHY's application for review and submission to the TMRO asserted that further normal value adjustments to the normal value for level of trade, export credit and VAT were required. These matters were also raised by GHY in the original investigation.

8.5.2.1 Export price (GHY)

All of GHY's toilet paper exports to Australia during the investigation period were sold to their Australian based intermediary, Paper Force.

Customs and Border Protection reviewed the information in relation to export price and considers that GHY is the exporter but the purchaser, Paper Force, did not import the goods exported to Australia by GHY.

As GHY has exported the goods to Australia but the goods have not been purchased from GHY by the importer, export price cannot be established under s.269TAB(1)(a). However, after examining the circumstances of these sales, Customs and Border Protection considers that all the circumstances of the sales are known and that the Minister can determine the export price for those goods having regard to all relevant information⁷⁵. Having regard to all the circumstances of the exportation, the export price can be calculated using the invoiced price less the charges incurred post-FOB.

⁷⁵ Under s.269TAB(1)(c).

8.5.2.2 Normal value (GHY)

Customs and Border Protection has reviewed the information in relation to the calculation of normal values for GHY.

GHY, the producer, sold like goods on the domestic market in China during the investigation period. GHY classified its customers according to the categories Key accounts, General Trade and AFH.

Customs considers that normal values for GHY can be established using its domestic sales of toilet paper in China⁷⁶.

Adjustments

The original investigation adjusted the normal value⁷⁷ for export expenses, export credit, VAT, domestic credit, domestic transportation and warehousing, domestic promotion expenses, difference in salespersons salaries, difference in regional sales office expenses and bad debt. No adjustment was made for level of trade.

Level of trade

GHY's application and submission to the TMRO asserted that its sales were to Paper Force, not Woolworths, and the sales to Paper Force should be compared to domestic sales to wholesalers not retailers. GHY claimed it sold the goods to Paper Force who resold the goods to Woolworths. GHY stated that as the buyer from producer GHY and seller to retailer Woolworths, Paper Force is a wholesaler and therefore export prices were at the wholesale level of trade.

An attachment to the Paper Force visit report contained a description provided by Paper Force of its roles depending on whether the customer traded under a delivery duty paid basis in containers, or on a palletized delivered duty paid basis or under FOB or CIF terms.

The record shows that GHY and Paper Force have, at various times, described Paper Force as a wholesaler, a distributor, a trader, and an importer. The reinvestigation examined the roles of the parties and of Paper Force and Woolworth's in particular in order to clarify its role in relation to the sales to Woolworths.

Customs and Border Protection considers that in export sales by GHY involving both Paper Force and Woolworths, Paper Force acted as an agent and did not perform any of the functions of a distributor. The information supporting this is that while the purchasing arrangement passed through Paper Force, that company had a very limited role in the transaction and Woolworths had control of the goods along the supply chain. Accordingly, Customs and Border Protection has compared export sales transactions

⁷⁶ In accordance with s.269TAC(1).

⁷⁷ Under s.269TAC(8).

involving both Paper Force and Woolworths with domestic sales to the Key Account level.

As the comparison of export price and normal value has been undertaken at the relevant levels, Customs and Border Protection does not consider that an adjustment to normal value is required for level of trade.

Export credit and VAT

Customs and Border Protection has examined the methodology used to calculate export credit. Where an adjustment amount is a percentage of the FOB value, the appropriate adjustment point is the domestic selling price information adjusted to the FOB point to calculate the amount, not the actual export price. In respect of export credit expenses where there are both domestic and export credit terms, Customs and Border Protection make the adjustment having regard to the interest rates and terms applying to both markets.

The principle is the same for VAT expenses. Customs and Border Protection considers that such methodology is reasonable.

Customs and Border Protection considers that the adjustments for export credit costs and VAT have been correctly made.

Other adjustments

Customs and Border Protection considers that adjustments⁷⁸ are also required for export expenses, domestic credit, domestic transportation and warehousing, domestic promotion expenses, difference in salespersons salaries, difference in regional sales office expenses and bad debt.

8.5.2.3 Dumping margin (GHY)

GHY submitted in response to SEF 138⁷⁹ that the timing comparison of export price and normal value for calculating the dumping margin in respect of some of its exports was not made at or as nearly as possible, the same time.

After considering the available evidence in relation to the tender awarded to Paper Force by Woolworths, Customs and Border Protection considers that the invoice date is the most appropriate date to use for the comparison of export prices and normal values.

Dumping margins have been determined for the investigation period by comparing weighted average export prices to weighted average normal values⁸⁰.

The dumping margin calculated for GHY is in the range of 5 percent to 10 percent. The dumping margin is not negligible⁸¹.

⁷⁸ Under s.269TAC(8).

⁷⁹ Page 1 GHY submission to SEF 138 24 November 2008.

⁸⁰ Under s.269TACB(2)(a).

8.5.2.4 Reinvestigation conclusion (GHY)

Customs and Border Protection has reviewed the calculation of export price, normal values and dumping margin for GHY. It considers that the correct methodologies were used and that the calculations are accurate.

Customs and Border Protection does not consider that an adjustment to normal value is required for level of trade and that the adjustment calculation for export credit and VAT are correct.

Customs and Border Protection affirms the original findings, in relation to exports to Australia by GHY, that:

- the Minister can determine export price GHY in accordance with s.269TAB(1)(c), having regard to all the circumstances of the exportations;
- normal values for GHY can be established in accordance with s.269TAC(1); and
- the Minister can determine that the normal value for GHY incorporate adjustments to account for differences between domestic and export sales for export expenses, export credit, VAT, domestic credit, domestic transportation and warehousing, domestic promotion expenses, difference in salespersons salaries, difference in regional sales office expenses and bad debt. The adjustments are in accordance with s.269TAC(8);
- in accordance with s.269TACB(2)(a), the Minister can be satisfied that the weighted average of export prices of toilet paper over the investigation period is less than the weighted average of corresponding normal values over the investigation period in respect of exports of the goods from GHY; and
- the dumping margin of goods dumped by GHY is not negligible.

In making this decision, Customs and Border Protection had regard to all relevant information and conclusions based on relevant information as outlined in Section 4 - *Reinvestigation Methodology*.

8.5.3 Fook Woo

Applications and submissions to the TMRO did not refer to export prices, normal value or dumping margins for Fook Woo.

8.5.3.1 Export price (Fook Woo)

Customs and Border Protection reviewed the information in relation to export price and considers that Fook Woo is the exporter. All Fook Woo's toilet paper exports to Australia were sold to either Merino (an Australian industry member) or to Woolworths.

⁸¹ Under s.269TDA(1).

Where Fook Woo has exported the goods to Australia and the goods has been purchased from Fook Woo by the importer (Merino) in an arms length transaction, Customs and Border Protection considers that the export price can be established under s.269TAB(1)(a).

Where Fook Woo has exported the goods to Australia and the goods have not been purchased from Fook Woo by the importer (Woolworths), Customs and Border Protection considers that the export price cannot be established under s.269TAB(1)(a).

Customs and Border Protection is not able to establish all the circumstances of these sales and consider that the Minister should be satisfied that while there is not sufficient information available to ascertain the export price under s.269TAB(1)(b) or s.269TAB(1)(c), export price can be determined under s.269TAB(3) having regard to all relevant information.

8.5.3.2 Normal value (Fook Woo)

Customs and Border Protection has reviewed the information in relation to the calculation of normal values for Fook Woo.

Customs and Border Protection considers that the Minister can be satisfied that normal value for Fook Woo cannot be determined using domestic sales⁸² due to the absence or low volume of sales in the ordinary course of trade in the domestic market of the country of export⁸³.

Customs and Border Protection considers that available information can be relied upon to construct a normal value⁸⁴.

Where sales in the ordinary course of trade are not in sufficient quantities, an amount for profit⁸⁵ may be added in constructing a normal value.

As Customs and Border Protection considers that the low volumes of profitable sales are not suitable for determination of a normal value⁸⁶, the profit achieved on this small volume in the constructed normal value has not been used⁸⁷. Alternative methods to calculate profit for incorporation in a constructed normal value were considered⁸⁸ but were not deemed to be necessary, given that the inclusion of a profit component was not considered reasonable in this circumstance.

⁸² Under s.269TAC(1).

⁸³ Refer s.269TAC(2)(a)(i) and s.269TAC(14).

⁸⁴ Under s.269TAC(2)(c).

⁸⁵ Under Regulation 181A.

⁸⁶ Under s.269TAC(1).

⁸⁷ Under s.269TAC(13).

⁸⁸ As specified in Regulations 182(2) – 182(3) and note Regulation 181(4) was not relevant.

Customs and Border Protection considers that the profitable sales were in low volume⁸⁹, making them unsuitable for the determination of normal value and considers that the inclusion of a profit for Fook Woo is not reasonable in these circumstances.

Customs and Border Protection considers adjustments⁹⁰ for domestic inland transport and handling charges to the FOB level and for VAT credit on export (certain transactions only) are required to ensure that the normal value is properly comparable to the export prices.

8.5.3.3 Dumping margin (Fook Woo)

Dumping margins have been determined for the investigation period by comparing weighted average export prices to weighted average normal values⁹¹.

The dumping margin calculated for Fook Woo is in the range of 2 percent to 5 percent. The dumping margin is not negligible⁹².

8.5.3.4 Reinvestigation conclusion (Fook Woo)

Customs and Border Protection has reviewed the calculation of export price, normal values and dumping margin for Fook Woo. It considers that the correct methodologies were used and that the calculations are accurate.

Customs and Border Protection affirms the original findings, in relation to exports to Australia by Fook Woo, that:

- where the sales are between Fook Woo and Merino (one of the importers), the export price can be established under s.269TAB(1)(a);
- where the sales are not between Fook Woo and Merino, in accordance with s.269TAB(3), the Minister can:
 - be satisfied, that sufficient information has not been furnished or is not available to enable the export price of toilet paper exported to Australia from China by exporters Fook Woo, to be ascertained under the preceding subsections of s.269TAB; and
 - determine the export price of toilet paper exported from China by Fook Woo having regard to all relevant information;
- in accordance with s.269TAC(2)(a)(i), the Minister can be satisfied that due to the absence or low volume of sales in the ordinary course of trade in the domestic market of China by Fook Woo, normal values for Fook Woo cannot be established under s.269TAC(1);
- the Minister can determine, in accordance to s.269TAC(2)(c), the cost of production for toilet paper by Fook Woo, and on the assumption that the goods, instead of being exported, had been sold for home

⁸⁹ Under s.269TAC(14).

⁹⁰ Under s.269 TAC TAC(9).

⁹¹ Under s 269TACB(2)(a).

⁹² Under s 269TDA(1).

consumption in the ordinary course of trade, determine the SG&A costs associated with the sale and any profit on the sale; and

- the Minister can determine that the normal value for Fook Woo incorporate adjustments to account for differences between domestic and export sales for domestic inland transport and handling charges to the FOB level and for VAT credit on export (certain transactions only). The adjustments are in accordance with s.269TAC(9).
- in accordance with s.269TACB(2)(a), the Minister can be satisfied that the weighted average of export prices of toilet paper over the investigation period is less than the weighted average of corresponding normal values over the investigation period in respect of exports of the goods from Fook Woo; and
- the dumping margin of goods dumped by Fook Woo is not negligible.

In making this decision, Customs and Border Protection had regard to all relevant information and conclusions based on relevant information as outlined in Section 4 – *Reinvestigation Methodology*.

8.5.4 Other selected exporters

In applications to the TMRO, an exporter, W&D, and its associated importer JSH, asserted that Customs and Border Protection incorrectly interpreted the sampling provisions of the legislation. Both companies assert that the export price and normal value for W&D should have been worked out as if W&D were a residual exporter rather than applying a non-cooperative rate and treating W&D as an “other selected exporter”. Neither company made submissions to Customs and Border Protection on this issue before the Minister made the reviewable decision.

8.5.4.1 Circumstances relevant to W&D

W&D was a selected exporter. It completed the preliminary information request and declared that it did export toilet paper to Australia during the investigation period, but would not co-operate with the investigation⁹³.

Consistent with the sampling method outlined at 8.5.1 – *Selection and sampling*, W&D cannot be a residual exporter (i.e. non-sampled cooperating) as it elected not to cooperate with the investigation. W&D is therefore an “other selected exporter”. Customs and Border Protection’s examination of export price and normal value for “other selected exporters” is contained in Section 8.5.4.2 – *Export price* and Section 8.5.4.3 – *Normal value* below.

Customs and Border Protection considers that the provisions of s.269TAB(3), s.269TAC(6) and s.269TACB(8) have been correctly applied for W&D.

8.5.4.2 Export price (other selected exporters)

For other selected exporters, Customs and Border Protection considers the Minister can be satisfied that sufficient information has not been furnished or

⁹³ Page 1 W&D preliminary information request response 8 April 2008.

is not available to enable the export price of toilet paper exported to Australia from China by these exporters to be ascertained under s.269TAB(1).

Customs and Border Protection considers that the Minister can determine the export price for the other selected exporters having regard to all relevant information⁹⁴.

The relevant information used is the weighted average of export prices for like goods of the relevant sampled cooperating exporters from China.

8.5.4.3 Normal value (other selected exporters)

For other selected exporters, Customs and Border Protection considers the Minister can be satisfied that sufficient information has not been furnished or is not available to enable the normal value of toilet paper exported to Australia from China to be ascertained using domestic sales⁹⁵ or under s.269TAC(2).

Customs and Border Protection considers that the Minister can determine the normal values for the other selected exporters having regard to all relevant information⁹⁶.

Customs and Border Protection has examined the methodology used in the original investigation for calculating the normal value – whereby it distinguished between cooperating, non-cooperating, and residual exporters – and considered that it was reasonable.

For other selected exporters, the relevant information used in the original investigation to determine a normal value for all non-cooperating exporters was the highest normal value for the selected cooperating exporters was reasonable.

8.5.4.4 Dumping margins (other selected exporters)

Dumping margins for other selected exporters have been determined for the investigation period by comparing weighted average export prices to weighted average normal values⁹⁷.

The dumping margin calculated for other selected exporters is in the range of 20 percent to 25 percent. The dumping margin is not negligible⁹⁸.

8.5.4.5 Reinvestigation conclusion (other selected exporters)

Customs and Border Protection concludes that the correct exporter category for W&D is ‘other selected exporter’ and that the correct provisions have been applied to determine export price, normal value and dumping margins.

⁹⁴ Under s.269TAB(3).

⁹⁵ In accordance with s.269TAC(1).

⁹⁶ Under s.269TAC(6).

⁹⁷ Under s.269TACB(2)(a).

⁹⁸ Under s.269TDA(1).

Customs and Border Protection concludes that the correct methodologies were used and that the calculations are accurate.

The reinvestigation affirms the original findings, in relation to export price and normal value for other selected exporters, that:

- in accordance with s.269TAB(3), the Minister can:
 - be satisfied that sufficient information has not been furnished or is not available to enable the export price of toilet paper exported to Australia from China by other selected exporters, to be ascertained under the preceding subsections of s. 269TAB; and
 - determine the export price of toilet paper exported from China by other selected exporters having regard to all relevant information;
- in accordance with s.269TAC(6), the Minister can:
 - be satisfied that sufficient information has not been furnished or is not available to enable the normal value of toilet paper exported to Australia from China by other selected exporters, to be ascertained under the preceding subsections of s.269TAC; and
 - determine normal value of toilet paper exported from China by other selected exporters, having regard to all relevant information;
- in accordance with s.269TACB(2)(a), the Minister can be satisfied that the weighted average of export prices of toilet paper over the investigation period is less than the weighted average of corresponding normal values over the investigation period in respect of exports of the goods by other selected exporters; and
- the dumping margin of goods dumped by other selected exporters are not negligible.

In making this decision, Customs and Border Protection had regard to all relevant information and conclusions based on relevant information as outlined in Section 4 - *Reinvestigation Methodology*.

8.5.5 Residual exporters

Applications and submissions to the TMRO did not refer to export prices, normal value or dumping margins for residual exporters. The non-sampled cooperating exporters/producers from China were:

- Dongguan Zhida Paper Products Co., Ltd (Dongguan Zhida);
- Jiangmen Luck Tissue Mfy Ltd (Jiangmen);
- Dongguan Lixinde Paper Co., Ltd (Dongguan Lixinde);
- Shanghai Clean Paper Co., Ltd (Shanghai Clean); and
- Shantou B & S Paper Co., Ltd (Shantou).

8.5.5.1 Export price (residual exporters)

For the residual exporters, Dongguan Zhida, Jiangmen, Dongguan Lixidne, Shanghai Clean, and Shantou, Customs and Border Protection considers that the Minister can be satisfied that sufficient information has not been furnished

or is not available to enable the export price of toilet paper exported to Australia from China by these exporters to be ascertained under s.269TAB(1).

Customs and Border Protection considers that the Minister can determine the export price for the residual exporters Dongguan Zhida, Jiangmen, Dongguan Lixinde, Shanghai Clean and Shantou having regard to all relevant information⁹⁹ being the weighted average of export prices for like goods of the relevant sampled cooperating exporters from China¹⁰⁰.

8.5.5.2 Normal value (residual exporters)

For the residual exporters Dongguan Zhida, Jiangmen, Dongguan Lixidne, Shanghai Clean, and Shantou, Customs and Border Protection considers the Minister can be satisfied that sufficient information has not been furnished or is not available to enable the normal value of toilet paper exported to Australia from China to be ascertained under ss.269TAC(1) or 269TAC(2).

Customs and Border Protection considers that the Minister can determine the normal values for the residual exporters Dongguan Zhida, Jiangmen, Dongguan Lixinde, Shanghai Clean and Shantou having regard to all relevant information¹⁰¹ being the weighted average of normal for like goods of the relevant sampled cooperating exporters from China¹⁰².

8.5.5.3 Dumping margins (residual exporters)

Dumping margins have been determined for residual exporters in the investigation period by comparing weighted average export prices to weighted average normal values¹⁰³.

The dumping margin calculated for residual exporters is in the range of 5 percent to 10 percent. The dumping margin is not negligible¹⁰⁴.

8.5.5.4 Reinvestigation conclusion (residual exporters)

Customs and Border Protection has reviewed the calculation of export price, normal values and dumping margin for residual exporters. The reinvestigation concludes that the correct methodologies were used and that the calculations are accurate.

The reinvestigation affirms the original findings, in relation to export price and normal value for residual exporters, that:

- in accordance with s.269TAB(3), the Minister can:
 - be satisfied that sufficient information has not been furnished or is not available to enable the export price of toilet paper exported to

⁹⁹ Under s.269TAB(3).

¹⁰⁰ Under ss.269TG(3B) and 269TG(3C).

¹⁰¹ Under s.269TAC(6).

¹⁰² Under ss.269TG(3B) and 269TG(3C).

¹⁰³ Under s.269TACB(2)(a).

¹⁰⁴ Under s.269TDA(1).

Australia from China by residual exporters, to be ascertained under the preceding subsections of s.269TAB; and

- determine the export price of toilet paper exported from China by residual exporters having regard to all relevant information;
- in accordance with s.269TAC(6), the Minister can:
 - be satisfied that sufficient information has not been furnished or is not available to enable the normal value of toilet paper exported to Australia from China by residual exporters, to be ascertained under the preceding subsections of s.269TAC; and
 - determine normal value of toilet paper exported from China by residual exporters, having regard to all relevant information;
- in accordance with s.269TACB(2)(a), the Minister can be satisfied that the weighted average of export prices of toilet paper over the investigation period is less than the weighted average of corresponding normal values over the investigation period in respect of exports of the goods by residual exporters; and
- the dumping margin of goods dumped by residual exporters is not negligible.

In making this decision, Customs and Border Protection had regard to all relevant information and conclusions based on relevant information as outlined in Section 4 – *Reinvestigation Methodology*.

8.5.6 Volume of dumped goods from China

Applications and submissions to the TMRO did not address the volume of dumped goods from China

Customs and Border Protection has examined relevant information and conclusions based on relevant information and considers that the volume of dumped exports from China is not negligible¹⁰⁵.

8.5.6.1 Reinvestigation conclusion (volume of dumped goods from China)

The reinvestigation concludes that grounds did not exist for terminating the investigation in so far as it related to China on the basis of negligible volume of imports.

The reinvestigation affirms the original finding, in relation to volume of dumped goods from China, that:

- the volume of dumped goods exported from China is not negligible when expressed as a percentage of the total Australian import volume.

¹⁰⁵ Under s.269TDA(4).

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In making this decision, Customs and Border Protection had regard to all relevant information and conclusions based on relevant information as outlined in Section 4 - *Reinvestigation Methodology*.

9 ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY

9.1 Summary of reinvestigation findings

The reinvestigation has considered all relevant information and conclusions based on relevant information and decided that the economic condition of the Australian industry shows that Australian industry has experienced injury from loss of market share in 2007 and price depression in the toilet paper market, and imported premium toilet paper from China and Indonesia undercut the price of the Australian industry in the retail sector.

The following individual original findings are affirmed:

- the applicants can be taken to be representative of the Australian industry for the purpose of price and profit effects;
- Australian industry experienced loss of market share in 2007; and
- the Australian industry experienced price depression in the toilet paper market.

Customs and Border Protection makes the following new findings:

- the performance of the Australian industry immediately before and after the introduction of the allegedly dumped imports will be examined;
- all available information will be used to establish the changes that have occurred in the toilet paper market;
- market volume is best represented by standard rolls;
- market share for the Australian industry and imports in the AFH sector cannot be assessed;
- the Australian industry has not experienced price suppression in the toilet paper market;
- imported premium toilet paper from China and Indonesia undercut the price of the Australian industry in the retail sector;
- sufficient information is not available to make any conclusions about price undercutting in the AFH sector;
- the Australian industry has not experienced reduced profit and profitability; and
- insufficient information is available to assess injury to the Australian industry from other economic factors.

9.2 Focus of the reinvestigation

The findings on a material question of fact, or on a conclusion based on that fact, in relation to the economic condition of the Australian industry, which are to be reinvestigated include:

- is the information in relation to the economic condition of the Australian industry sufficiently representative for the purposes of injury analysis for the industry as a whole (Section 9.3);

- injury analysis basis (Section 9.4); and
- is the Australian industry experiencing injury (Section 9.5).

9.3 Australian industry for injury analysis

Applications to the TMRO expressed views that injury to the Australian industry as a whole could not be assessed because the details of one non-applicant member of the Australian industry, understood to produce about 30 percent of the like good with a market share of the same order, was not available to Customs and Border Protection¹⁰⁶.

Two of the parties seeking review stated in their submissions to the TMRO that they '*consider that the mere fact that the applicants combined share is in excess of 50% of total Australian production*' is in light of the behaviour in the investigation of one (large) non-applicant member of the Australian industry, and there is '*insufficient cause to consider the applicant's price and profit performance to be representative of the Australian industry as a whole*'¹⁰⁷.

The submission to the TMRO from the applicants points to information that was available to Customs and Border Protection that supports that injury analysis was conducted for more than the applicant companies¹⁰⁸.

9.3.1 The reinvestigation (Australian industry for injury analysis)

At Section 6 - *The goods and like goods*, Customs and Border Protection affirmed the original finding that the Australian industry comprised KCA, SCA, ABC and Encore.

At Section 7.3 – *Market sectors*, Customs and Border Protection affirmed there are two sectors in the toilet paper market (retail and AFH). However, Customs and Border Protection found that the resultant size of the market did not align with the views expressed by interested parties and that the growth rate of the retail sector was significantly higher than would be expected.

Customs and Border Protection reconstructed the market for the retail sector based upon data from scanned retail sales reports and using a standard roll as the base unit for calculations rather than weight. Interested parties estimated the AFH sector to be in the order of between 10 to 20 percent of the size of the retail sector. However, Customs and Border Protection has concluded at Section 7.5 - *Market size* that sufficient reliable information is not available to construct the AFH sector of the toilet paper market.

The Australian industry operates in both market sectors but as the retail sector is the dominant part of the market, and the information available in relation to sales to that sector is reliable, the assessment of the whether the applicants

¹⁰⁶ Pages 8-9 Pindo Deli application to TMRO 19 January 2009, page 4-5 GHY application to TMRO 19 January 2009 and page 13-14 Woolworths application to TMRO 29 January 2009.

¹⁰⁷ Page 4 GHY and Pindo Deli submission to TMRO 16 April 2009.

¹⁰⁸ Pages 5-9 KCA and SCA submission to TMRO 16 April 2009.

are representative of the Australian industry has initially been confined to that sector.

Based on data from scanned retail sales reports in standard rolls, the applicants consistently account for 60 to 70 percent of the sales of retail toilet paper by the Australian industry from 2004 to 2007. This proportion also accords with the available information about the proportion held by ABC, a significant non-applicant member of the Australian industry and Merino, a smaller non-applicant member of the Australian industry.

Customs and Border Protection considers that the applicants' proportion of the retail sector is sufficiently high to make the applicants representative of the Australian industry in that sector for price and profit effects. Customs and Border Protection also has information in relation to the significant non-applicant Australian industry members, for the analysis of price depression and price undercutting. Customs and Border Protection considers that reliable information is available in relation to sales by all members of the Australian industry to assess volume effects in the retail sector.

Further, due to the dominance of the retail sector in the toilet paper market, Customs and Border Protection considers that the applicants retail sales are representative of the Australian industry as a whole when assessing price and profit effects.

9.3.2 Reinvestigation conclusion (Australian industry for injury analysis)

Customs and Border Protection concludes that the applicants are representative of the Australian industry as a whole for the assessment of price and profit effects.

The reinvestigation affirms the original findings, in relation to Australian industry for injury analysis, that:

- the applicants can be taken to be representative of the Australian industry for the purpose of price and profit effects.

In making this decision, Customs and Border Protection had regard to all relevant information and conclusions based on relevant information as outlined in Section 4 - *Reinvestigation Methodology*.

9.4 Injury analysis basis

An application to the TMRO expressed views on the selection of a 'base year' for injury analysis¹⁰⁹ and the issue was the subject of correspondence during the original investigation as well as addressed in SEF 138 and REP 138.

¹⁰⁹ Page 6-7 Woolworths application to TMRO 29 January 2009.

9.4.1 Original investigation (injury analysis basis)

Examination of the available information suggest that Woolworths considered that Customs and Border Protection's analysis of the years 2006 and 2007 for injury purposes was not appropriate on the basis that 2004, not 2006, is the base year.

The original investigation sought to explain that collection and examination of data for the period 2004 to 2007 does not automatically make 2004 the base year for comparison. If a base year is to be used to compare the performance in the period that injury is claimed, then the appropriate base year is a year that is unaffected by the event that has been claimed to cause the injury.

9.4.2 The reinvestigation (injury analysis basis)

The applicants claimed injury commenced from the start of 2007 and provided data in relation to their performance commencing from 1 January 2004 through to 31 December 2007, the injury analysis period. This data was provided in accordance with the 'Application for Dumping and/or Countervailing Duties Form'¹¹⁰ which seeks data for a period of at least four years (for example the current financial year in addition to three prior years) where information is provided annually.

9.4.2.1 Injury comparison points

In a situation where injury is said to have arisen at a point in time, it is usual practice to look at information for a period preceding the introduction of the allegedly dumped imports into the market. In this case, an important event is the commencement of sales of the imported *Select* Brand goods by Woolworths in the last month of 2006.

Where several years of data is available prior to the introduction of the allegedly dumped imports, the more immediately preceding period may be more relevant to understanding the impact of the dumped imports rather than a point in time several years before. However, comparing performance immediately before and after an important event is different to the selection of a 'base year' within a given data set.

For this case, Customs and Border Protection considers that while the injury is claimed to have commenced in late 2006, the data for 2004 and 2005 should also be considered when evaluating the trends and fluctuations over time, and ultimately, when seeking to understand the effects of the dumped goods. Customs and Border Protection also considers that information available prior to 2004, for example in relation to one non-applicant member of the Australian industry, should also be included in the injury analysis.

¹¹⁰ Available from www.customs.gov.au.

9.4.2.2 Unit for volume assessment

Another aspect of injury analysis is the unit in which comparisons are made. The original investigation considered it reasonable to undertake injury analysis on a weight basis rather than a roll basis¹¹¹.

Section 7.5 - *Market size* sets out details of the volume information available in the original investigation and an assessment of the use of weight as the unit for conducting volume comparisons and Customs and Border Protection conclusion in this reinvestigation that the toilet paper market volume is best represented by standard rolls.

9.4.3 Reinvestigation conclusion (injury analysis basis)

Customs and Border Protection concludes that:

- the performance of the Australian industry immediately before and after the introduction of the allegedly dumped imports be examined;
- all available information up to 31 December 2007 should be used to establish the changes that have occurred in the toilet paper market; and
- the toilet paper market unit of volume is best represented by standard rolls.

Customs and Border Protection makes new findings in relation to injury analysis basis, that:

- the performance of the Australian industry immediately before and after the introduction of the allegedly dumped imports will be examined;
- all available information up to 31 December 2007 will be used to establish the changes that have occurred in the toilet paper market; and
- the toilet paper market unit of volume is best represented by standard rolls.

In making this decision, Customs and Border Protection had regard to all relevant information and conclusions based on relevant information as outlined in Section 4 – *Reinvestigation Methodology*.

9.5 Injury to Australian industry

Note: In this section, ‘Australian industry’ refers to KCA, SCA, ABC and Encore, while ‘applicants’ refers only to KCA and SCA.

9.5.1 Volume effects

Applications to the TMRO did not question that the Australian industry lost market share but rather focussed on the absence of a conclusion that dumping had caused that injury¹¹² and that it had not been shown that the Australian industry had the capacity to supply the expanding market (and

¹¹¹ Pages 53-54 REP 138 16 December 2008.

¹¹² Page 14 Pindo Deli application to TMRO 19 January 2009, pages 4-5 GHY application to TMRO 19 January 2009 and pages 13-14 Woolworths application to TMRO 29 January 2009.

maintain market share)¹¹³. These aspects are addressed in Section 10 – *Has dumping caused material injury?*

In Section 7- *Australian market and demand*, Customs and Border Protection made new findings that data from the scanned retail sales reports be used to construct the retail sector of the toilet paper market and that sufficient reliable information is not available to construct the AFH sector of the toilet paper market (or the total toilet paper market) during the injury analysis period. Customs and Border Protection also concluded that the toilet paper market unit of volume is best represented by standard rolls.

The following volume assessments are based on the information as established by the reinvestigation.

9.5.1.1 Sales volume

Customs and Border Protection notes that the applicants did not claim injury from loss of sales volumes.

Analysis of the available information shows that the volume of sales by the Australian industry has increased each year from 2005 to 2007 albeit at a reducing rate in the latter years.

Customs and Border Protection concludes that the Australian industry has not experienced a loss of sales volume.

9.5.1.2 Market share

In Section 7.5 – *Market size*, Customs and Border Protection concluded that sufficient reliable information is not available to construct the AFH sector, nor the total toilet paper market, in the injury analysis period. Customs and Border Protection used data from scanned retail sales reports to construct the size of the retail sector.

Market shares of the retail sector of the toilet paper market show the following:

- the retail sector (in rolls) increased by about 10 percent between 2004 and 2007;
- the share held by the premium sub-sector has increased by 23 percent over that period, and this grade occupies two thirds of the total retail sector;
- the premium sub-sector, apart from some small volumes from Indonesia in 2004 and 2005, had been supplied exclusively by Australian manufactured product up until 2007;
- in 2007, imports from China and Indonesia are estimated to have held about four percent of the premium sub-sector and six percent of the total retail sector;
- in the premium sub-sector, ABC increased its market share between 2004 and 2007;

¹¹³ Page 10 Woolworths application to TMRO 29 January 2009.

- in the premium sub-sector, the applicants showed a decline in market share between 2004 and 2005 and a further decline between 2006 and 2007;
- the Australian industry increased market share in the retail sector between 2004 and 2006 with the share in 2007 falling back below that achieved in 2006;
- the share of the retail sector held by imports from China fell between 2004 and 2005 and fell again in 2006 only to increase in 2007 to levels above those previously attained; and
- the share of the retail sector held by Indonesia has steadily declined between 2004 and 2007.

Customs and Border Protection concludes that the applicants, and the Australian industry as a whole, lost market share of the retail sector in 2007, while imports from China gained market share of the retail sector in 2007.

Customs and Border Protection cannot assess the market share of the Australian industry and imports in the AFH sector. However, given the size of the retail sector compared to the AFH sector, the retail sector is considered to be representative of the total Australian toilet paper market.

9.5.1.3 Reinvestigation conclusion (volume effects)

Customs and Border Protection concludes that:

- the Australian industry has not experienced a loss of sales volume;
- the Australian industry lost market share in the retail sector in 2007;
- market share for the Australian industry and imports in the AFH sector cannot be assessed; and
- the retail sector is considered to be representative of the total toilet paper market.

Customs and Border Protection affirms the following original findings, in relation to volume effects, that:

- Australian industry experienced loss of market share in 2007.

Customs and Border Protection makes a new finding, in relation to volume effects, that:

- market share for the Australian industry and imports in the AFH sector cannot be assessed.

In making this decision, Customs and Border Protection had regard to all relevant information and conclusions based on relevant information as outlined in Section 4 – *Reinvestigation Methodology*.

9.5.2 Price effects

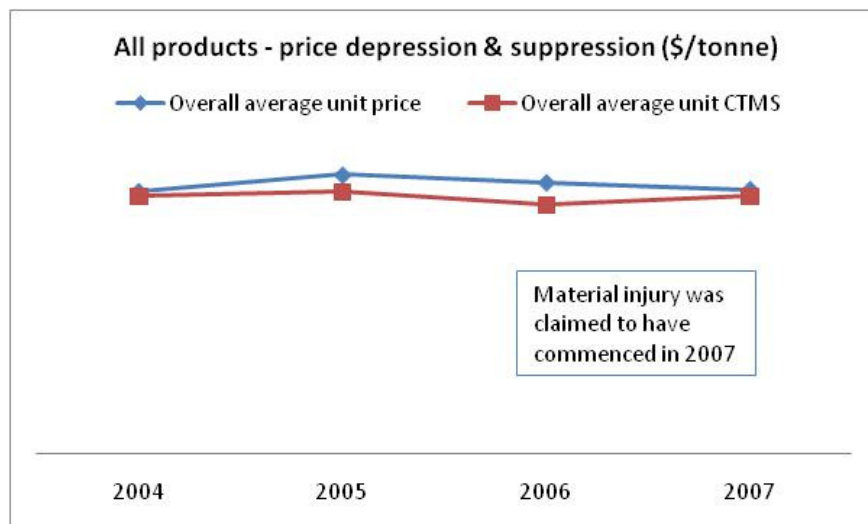
Applications and submissions to the TMRO did not question that the Australian industry experienced injury from price effects, but rather focussed on other possible causes of injury.

Customs and Border Protection concluded in Section 9.4 - *Injury analysis basis*, that the toilet paper market unit of volume is best represented by standard rolls. While this method was able to be used for examining volume effects, equivalent data is not available on a cost per roll basis. Therefore Customs and Border Protection has used the same tonne basis as used in REP 138. When reproducing the graphs for this report, it was noted that the relevant axis for some graphs did not commence at zero. This has been rectified in this report.

9.5.2.1 Price depression and suppression

Price depression occurs when there is a reduction in prices. Price suppression is the inability to raise prices in line with cost increases or when the margin between selling price and costs is reduced.

The graph below shows prices and costs for the applicants for the toilet paper market.



Customs and Border Protection observes that the applicants' margin between prices and costs for toilet paper sales shows improvement in 2005 and 2006. The margin then narrowed in 2007, but this margin was greater than the situation that existed in 2004.

Customs and Border Protection considers that the applicant's selling prices in the toilet paper market show depression and suppression when compared to the two year period prior to the claimed commencement of injury. It is also noted that the situation had been improving prior to 2007.

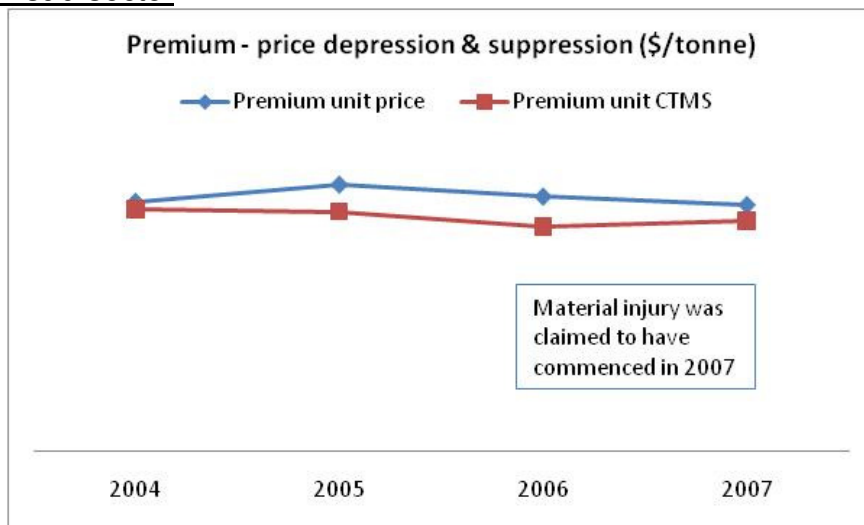
As concluded in Section 9.3 – *Australian industry for injury analysis*, Customs and Border Protection considers that the applicants are representative of the Australian industry as a whole for the assessment of price and profit injury. The above commentary therefore relates to the Australian industry as a whole.

As the AFH sector only constitutes a small part of the toilet paper market the applicants' results for the retail sector closely align with that of the total toilet paper market.

Retail sector

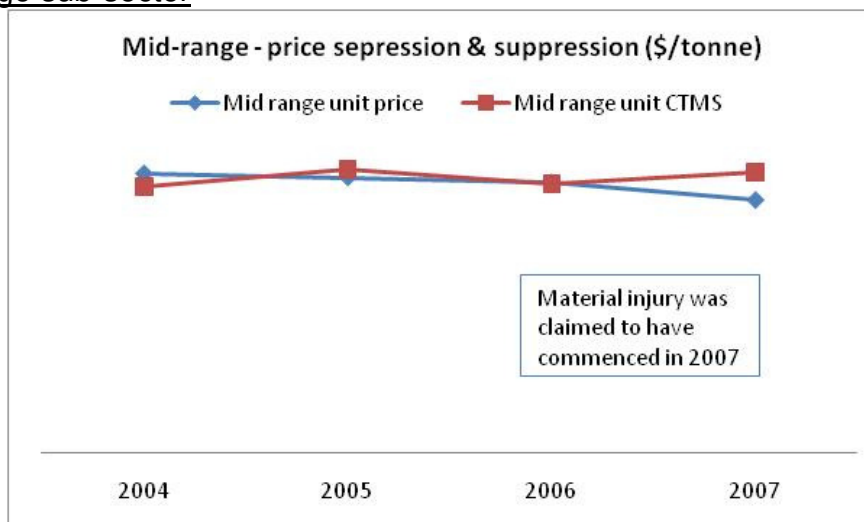
Customs and Border Protection has analysed the premium, mid-range and economy sub-sectors individually. The individual results for each sub-sector are quite different but as the majority of the applicant's sales are to the premium sector, it is the results of this sub-sector that establishes the outcome for the retail sector overall and in turn the results for the total Australian toilet paper market.

Premium sub-sector



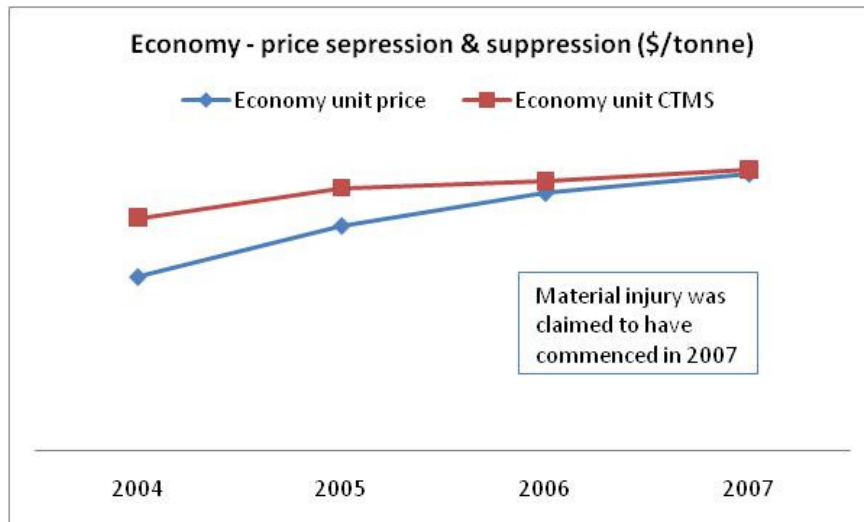
Average selling prices increased between 2004 and 2005 but declined in subsequent years. Prices in 2007 were around the level of those in 2004. The margin between prices and costs improved in 2005 and 2006 but by 2007 had narrowed to be a little better than that in 2004.

Mid-range sub-sector



Average selling prices declined over the whole of the period from 2004. The margin between prices and costs has moved between profitable and not profitable with 2007 showing a marked deterioration on the results of previous years.

Economy sub-sector



Average selling prices have increased over the period from 2004. The margin between prices and costs has improved with a steady movement towards diminishing losses seeing the economy sub-sector approach break-even in 2007.

AFH sector

As noted above, the AFH sector only constitutes a small part of the applicants' toilet paper market and, as such, has little impact on the overall toilet paper market for the applicants. Customs and Border Protection notes only one of the applicants produce toilet paper for the AFH sector.

Based on information available, Customs and Border Protection observed some movements between costs and prices that occurred between 2004 and 2007, with 2007 showing a move towards not profitable.

Consideration of individual applicant's situation

Customs and Border Protection considers that the overall average selling prices of both applicants show depression when compared to the two year period prior to the claimed commencement of injury.

In relation to overall costs, Customs and Border Protection notes that the increase in unit costs was heavily influenced by an increase in unit costs of one of the applicants. Closer examination of the relevant information for that applicant showed that the increase in unit costs was only apparent for one applicant.

Customs and Border Protection considers that the price suppression evident for one applicant cannot be taken to have been experienced by the Australian industry as a whole.

9.5.2.2 Price undercutting

Price undercutting occurs when imported product is sold at a price below that of the Australian manufactured like product.

Customs and Border Protection examined the undercutting analysis undertaken by the original investigation to gauge the relevance of the information available. Undercutting in the retail and AFH sectors are separately considered below with analysis in the retail sector focussing on the majority of the sector – the premium sub-sector. Information verified at importer visits shows that the goods from both China and Indonesia were sold into the premium sub-sector.

Retail sector

Customs and Border Protection considers that the undercutting analysis must include ABC's activity in the retail sector.

Customs and Border Protection considers that relevant information was provided by Woolworths that can be used to understand the market and the relativities between ABC, KCA, SCA and imported product.

Customs and Border Protection is of the view that relative pricing on an annual basis at the into retail store level is the most suitable comparison in this case as it levels the price fluctuations that have been observed and provides a common comparison point for Australian manufactured product and imported product.

Price comparison was undertaken, by supplier, for the most popular premium pack size sold by retail, 8-roll or equivalent (4-roll double length) pack sizes. The result of that analysis was that the into retail store prices for the Australian industry were undercut by the imports from China and Indonesia.

Customs and Border Protection considers that there is evidence that the imported premium toilet paper from China and Indonesia undercut the price of the Australian industry in the retail sector.

AFH sector

Customs and Border Protection considers that limitations in the data used for AFH price undercutting analysis in the original investigation mean that no reliable conclusions can be drawn about the level of undercutting, if any, by the imported goods in the AFH sector.

9.5.2.3 Reinvestigation conclusion (price effects)

Customs and Border Protection concludes that:

- the Australian industry's selling prices in the toilet paper market show depression when compared to the period for two years prior to the claimed commencement of injury;
- the Australian industry as a whole has not experienced price suppression;

- imported premium toilet paper from China and Indonesia undercut the price of the Australian industry in the retail sector; and
- sufficient information is not available to make any conclusions about price undercutting in the AFH sector.

Customs and Border Protection makes new findings, in relation to price effects, that:

- the Australian industry experienced price depression in the toilet paper market;
- imported premium toilet paper from China and Indonesia undercut the price of the Australian industry in the retail sector; and
- sufficient information is not available to make any conclusions about price undercutting in the AFH sector.

In making this decision, Customs and Border Protection had regard to all relevant information and conclusions based on relevant information as outlined in Section 4 – *Reinvestigation Methodology*.

9.5.3 Profit effects

Applications and submissions to the TMRO did not question that the Australian industry experienced injury from profit effects, but rather focussed on other possible causes of injury.

As with Section 9.5.2 – *Price injury*, Customs and Border Protection has used the same tonne basis as used in REP 138. The graphs for which the axis did not commence at zero have also been rectified in this section of the report.

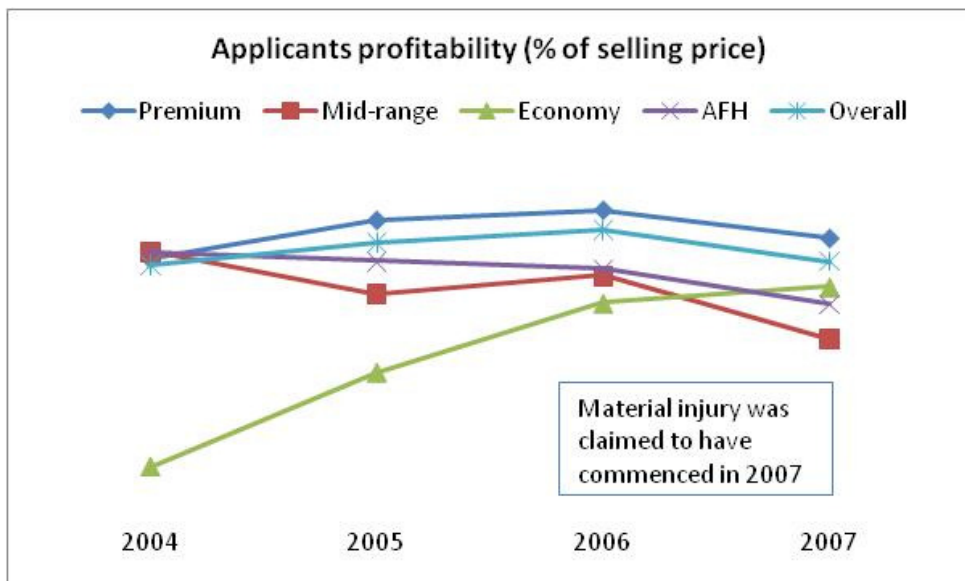
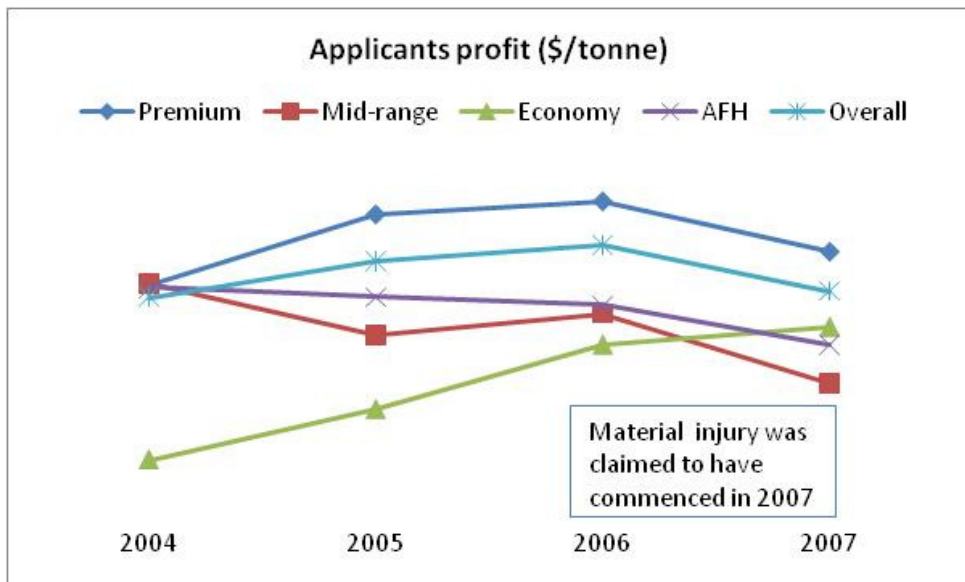
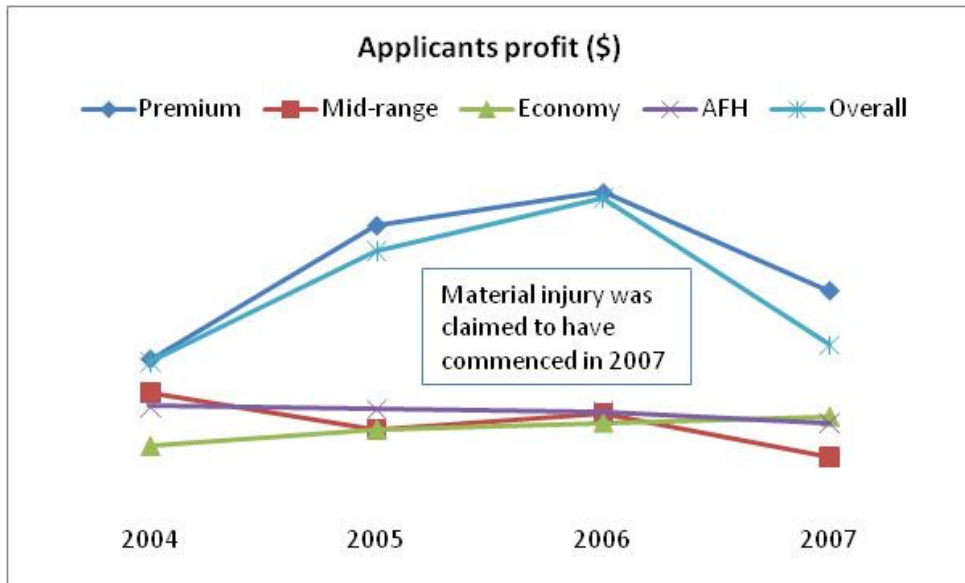
9.5.3.1 Profits and profitability

The following graphs show:

- profits for the applicants in dollar terms;
- profits for the applicants in dollar per tonne; and
- profitability for the applicants as a percentage of selling price.

The graphs show the total for the toilet paper market as well as the relativity for each sub-sector of the retail sector and the AFH sector.

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Customs and Border Protection observes that both profit graphs (in dollars and dollars/tonne) show:

- the influence of the premium sub-sector of the retail sector on the result for the total toilet paper market;
- overall profit improved in 2005 compared to 2004 and 2006 improved further over 2005; and
- overall profits fell in 2007, but remained at a level higher than that achieved in 2004.

Customs and Border protection notes that performance in the premium sector, as it contains about two thirds of the total market, has been the main influence on overall profits. Within the four year period examined, profitability has been within a six percentage points range - decreasing in 2007 but not back to the 2004 results.

In relation to profit and profitability, Customs and Border Protection notes that the increase in unit costs for one of the applicants has a major influence on the overall outcome for the applicants:

- for one of the applicants, the profit has remained relatively constant with a slight improvement in 2007; and
- the other applicant shows significantly more profitable sales throughout that same period, however its' unit costs increased in 2007 resulting in a loss of profit.

Consideration of individual applicant's situation

Reduced profit and profitability is only evident for one Australian industry member. That member's representation of the total Australian industry is such that Customs and Border Protection considers profit and profitability injury to that member alone cannot be taken to have been experienced by the Australian industry as a whole.

9.5.3.2 Reinvestigation conclusion (profit effects)

Customs and Border Protection concludes that:

- the Australian industry has not experienced reduced profit and profitability.

Customs and Border Protection makes a new finding, in relation to profit effects, that:

- the Australian industry has not experienced reduced profit and profitability.

In making this decision, Customs and Border Protection had regard to all relevant information and conclusions based on relevant information as outlined in Section 4 - *Reinvestigation Methodology*.

9.5.4 Other economic factors

Applications and submissions to the TMRO did not question whether the Australian industry experienced injury from other economic factors, but rather focussed on other possible causes of injury.

Customs and Border Protection considers that insufficient information is available to form a view in the reinvestigation on injury for the following other economic factors:

- assets;
- capital investment and return on investment;
- research and development expense;
- revenue;
- capacity and capacity utilisation;
- employment;
- productivity;
- stocks;
- cash flow measures; and
- wages.

9.5.4.1 Reinvestigation conclusion (other economic factors)

Customs and Border Protection concludes that:

- there is insufficient information available to assess injury to the Australian industry from other economic factors.

Customs and Border Protection makes a new finding, in relation to other economic factors, that:

- insufficient information is available to assess injury to the Australian industry from other economic factors.

In making this decision, Customs and Border Protection had regard to all relevant information and conclusions based on relevant information as outlined in Section 4 - *Reinvestigation Methodology*.

10 HAS DUMPING CAUSED MATERIAL INJURY

10.1 Summary of reinvestigation findings

Customs and Border Protection considered all relevant information and conclusions based on relevant information and makes the following new finding:

- the dumping of toilet paper from China and Indonesia has not caused material injury to the Australian industry.

10.2 Focus of the reinvestigation

The findings on a material question of fact, or on a conclusion based on that fact, in relation to whether dumping has caused material injury to the Australian industry, which are to be reinvestigated, include:

- the dumping findings (Section 10.3); and
- is the injury to the Australian industry caused by dumped goods from Indonesia and China and is that injury material (Section 10.4).

10.3 Dumping findings

In Section 8 - *Dumping*, Customs and Border Protection established that:

- exports of toilet paper from China (except Vinda Jiangmen) to Australia were at dumped prices during the investigation period. The weighted average dumping margin calculated is in the range 5 percent to 25 percent;
- exports of toilet paper from Indonesia to Australia were at dumped prices during the investigation period. The weighted average dumping margin calculated is in the range 33 percent to 45 percent;
- the volume of goods dumped by all exporters from China (except Vinda Jiangmen), is not negligible; and
- the volume of goods dumped by all exporters from Indonesia is not negligible.

The dumping margins appear high when the dumping amount is expressed as a percentage of the export price. Customs and Border Protection, in its causation analysis, considers that the actual dumping margin when expressed in terms of cents per roll is a relevant consideration because it will demonstrate the significance of the dumping amount in pricing in the Australian market as opposed to the measure of the amount in the country of export. The calculation focussed on the Woolworths' *Select* brand and the premium sub-sector of the retail sector of the toilet paper market as this product accounts for significant import volumes from both China and Indonesia.

The above calculation used the actual dumping measure that applied after the original investigation, measured in \$A per kg. The amounts show the full amount of the dumping because the a lesser duty was not applicable.

Account was taken of the fact that some *Select* Brand from China was in double rolls and some in single rolls, and for Indonesia it was double rolls.

Woolworths marketed the *Select* Brand with a single pricing structure which did not differentiate between country of origin. By far the greatest volume of *Select* brand were the standard rolls from China. When account is taken of the relative volumes of the exports from China and Indonesia of the various roll configurations a weighted average dumping margin per roll can be calculated. The weighted average dumping amount is 3 cents per roll.

The analysis using the constructed “undumped” price is detailed at Section 10.4.2.2 – *Undercutting*.

10.4 Cause of injury and materiality of injury to dumping

In Section 8 – *Dumping* and Section 9 – *Economic condition of the Australian industry*, Customs and Border Protection concluded toilet paper exported from Indonesia and China has been dumped and that the Australian industry experienced injury in the following forms:

- loss of market share;
- price depression; and
- price undercutting.

Customs and Border Protection examined the volume effect of the dumped imported goods, the effect of those imports on the prices in the Australian toilet paper market and the consequent impact on the Australian industry and other possible causes of injury to determine if the dumped goods from China and Indonesia caused material injury to the Australian industry.

10.4.1 Volume effects

In Section 9.5.1 - *Volume effects*, Customs and Border Protection found that Australian industry experienced loss of market share in 2007 but that there had been no loss of sales volumes.

10.4.1.1 Loss of market share

The size of the retail sector increased by about 10 percent between 2004 and 2007. Within that sector the premium sub-sector increased by 23 percent while both the mid-range and economy sub-sectors decreased. The premium sub-sector occupied two thirds of the total retail sector in 2007.

The premium sub-sector, apart from some small volumes from Indonesia in 2004 and 2005, had been supplied exclusively by Australian manufactured product up until 2007. In 2007, imports from China and Indonesia are estimated to have held about four percent of the premium sub-sector and six percent of the total retail sector.

The Australian industry increased their market share in the retail sector between 2004 and 2006 but in 2007 that share fell back below the 2005 level. The share of the retail sector held by the goods of Chinese origin fell in each

of the years 2004, 2005 and 2006 and increased in 2007 to levels above those previously attained. The goods of Indonesian origin's share of the retail sector declined steadily between 2004 and 2007.

Customs and Border Protection considers that the Australian industry lost market share in the retail sector to the dumped goods from China.

Customs and Border Protection cannot assess the relative market shares of the Australian industry and imports in the AFH sector. However, given the size of the retail sector compared to the AFH sector, the injury suffered by the Australian industry in the retail sector is considered to be injury to the Australian industry producing like goods.

Whether the loss of market share has caused injury to the Australian industry must be assessed in terms of the price depression and price undercutting experienced by the Australian industry.

10.4.2 Price effects

In Section 9.5.2 – *Price effects*, Customs and Border Protection found that the Australian industry experienced price depression and price undercutting.

10.4.2.1 Price depression

The average price per tonne of the two applicants declined between 2004 and 2005 and continued to decline through to 2007. Average cost per tonne followed the same pattern for 2005 and 2006 only to rise in 2007.

As the applicant's results for the retail sector, and within that sector the premium sub-sector, closely align to that of the total toilet paper market, Customs and Border Protection focussed on the premium sub-sector to gauge the effect of dumped imports.

Both applicants followed the same price trend through 2005 to 2007. It is noted that the decline in prices for both applicants commenced well before the entry into the market (and the premium sub-sector) of the dumped goods from China and Indonesia.

Customs and Border Protection noted that the sales volume into the premium sub-sector by ABC, the significant non-applicant Australian industry member, increased markedly from 2005. Customs and Border Protection considers that the presence of ABC may have led to increased price competition from that time. Customs and Border Protection considers that further price competition would have arisen when Woolworths *Select* brand entered the market in December 2006.

Before any conclusion can be drawn whether the dumped goods caused the price depression experienced by the Australian industry, the pricing relationship between the applicants, ABC and the dumped Woolworths' *Select* product from China and Indonesia must be examined. This is covered in the following Section 10.4.2.2 - *Undercutting*.

10.4.2.2 Undercutting

In assessing the price effects of dumping in the Australian retail sector, Customs and Border Protection focussed on the Woolworths' *Select* brand and the premium sub-sector of the retail sector of the toilet paper market as this product accounts for significant import volumes from both China and Indonesia. To quantify the price effects, Customs and Border Protection has worked out the dumping margins for each of the relevant exporters in terms of \$A per roll as outlined at Section 10.3 – *Dumping*, above.

In examining the relative price points of the imported goods and the Australian industry it is necessary that the presence in the market of competition from a significant non-applicant Australian industry member (ABC) be included so that any price injury that may stem from competition between the major Australian industry members is not attributed to dumped imports of the goods. At Section 9.5.2.2 - *Undercutting* Customs and Border Protection had considered information in relation to ABC's selling price to Woolworths when reaching the conclusion that imported premium toilet paper undercut the price of the Australian industry in the retail sector.

To gain an understanding of the effects of the dumped Woolworths' *Select* product from China and Indonesia on the Australian industry, Customs and Border Protection has added the amount of the dumping margin (in \$A per roll) to Woolworths' cost price to arrive at an adjusted un-dumped price. The prices for comparison were sourced from selling price information available from the applicants and the purchase price available from Woolworths (including purchases by Woolworths of ABC product). Separate analysis was undertaken for standard rolls and double rolls.

The result of comparing these prices is that:

- for standard rolls, the un-dumped price is marginally above Woolworths' cost price and below the prices of Australian produced premium products;
- for double rolls from China, the un-dumped price is marginally above Woolworths' cost price and below the cost price of Australian produced premium products;
- for double rolls from Indonesia, the un-dumped price is above the Chinese un-dumped price and below the cost price of Australian produced premium products; and
- price competition is evident between members of the Australian industry.

In summary, the adjusted un-dumped prices remain below those of the Australian produced premium products. Graphs illustrating the price relativities between ABC, KCA, SCA, imports from China and imports from Indonesia are at **Confidential Attachment A**.

Customs and Border Protection considers that while dumping has contributed to the price depression experienced by the applicants, factors other than the affect of the dumped goods must also be assessed.

10.4.3 Other possible causes of injury

Applications¹¹⁴ to the TMRO raised factors other than dumping that could have caused injury to the Australian industry. These included:

- competition from another industry member (ABC);
- appreciation of the Australian dollar against the United States (US) dollar which was argued must have affected the applicants' pricing decisions in 2007;
- the launch of a new product into the premium retail sector; and
- shifting consumer preference.

10.4.4 The reinvestigation (causation and materiality)

Customs and Border Protection has considered whether any injury to the Australian industry is being caused or threatened by a factor other than the exportation of the goods, and not attributed such injury to the goods¹¹⁵.

In relation to the issues raised in the applications to the TMRO, Customs and Border Protection makes the following comments:

- internal competition from other industry members is a relevant factor in this case and is discussed below;
- no information is available in relation to pricing decisions by the Australia industry and movements in relation to movements in exchange rates;
- the argument that the launch of a new product would of itself have had an impact on the performance of KCA and SCA is not relevant unless the argument is that this new product was produced by another member of the Australian industry. However, the new product was sourced from imports and therefore was potentially injurious to the Australian industry;
- the claims of shifting consumer preference as another source of injury does not appear substantiated in this case. There has been a trend of consumers moving to premium product, away from mid-range and economy products, but the injury to the Australian industry was primarily evidenced within the same sub-sector (premium).

Price depression was examined in light of the total market for the two applicants as Customs and Border Protection did not have average pricing for all of ABC's sales. However, Customs and Border Protection has examined the sales volume and average price into the premium sub-sector by ABC, the significant non-applicant Australian industry member, to assess whether competition between Australian industry members was a cause of injury.

Having regard to all available information, Customs and Border Protection considers that the presence of ABC in the premium sub-sector has had a

¹¹⁴ Pages 11-13 Pindo Deli application to TMRO 19 January 2009 and pages 8-11 GHY application to TMRO 19 January 2009.

¹¹⁵ Section 269TAE(2A).

significant influence on the price levels achieved by the other members of the Australian industry and that the main cause of injury was competition between Australian industry members.

Customs and Border Protection considers that injury experienced by the Australian industry was caused more by other factors than by the dumping.

10.4.5 Reinvestigation conclusion (causation and materiality)

Customs and Border Protection has considered the performance of the Australian industry as a whole, and that of the two applicants individually, over the period for which information is available (2004 to 2007) and concludes that:

- the Australian industry lost market share to dumped exports from China;
- the price depression must be assessed in conjunction with price undercutting; and
- after examining the price relativities and the effects of the dumping on prices in 2007, the injury evidenced through price undercutting was caused more by other factors than by dumping.

Customs and Border Protection makes a new finding that:

- the injury experienced by the Australian industry was caused more by other factors than by the dumping of the goods exported from China and Indonesia;
- injury to the Australian industry caused by dumping of the goods exported from China and Indonesia was not material.

In making this decision, Customs and Border Protection had regard to all relevant information and conclusions based on relevant information as outlined in Section 4 – *Reinvestigation Methodology*.

11 EFFECT OF FUTURE DUMPING

11.1 Summary of reinvestigation findings

Customs and Border Protection considered all relevant information and conclusions based on relevant information and makes the following new finding:

- material injury to the Australian industry by dumped imports from China and Indonesia is not foreseeable and imminent.

11.2 Focus of the reinvestigation

The findings on a material question of fact, or on a conclusion based on that fact, in relation to be reinvestigated, is:

- whether dumping will continue (Section 11.3).; and
- whether material injury to the Australian industry caused by any future dumping is foreseeable and imminent (Section 11.4).

11.3 Will dumping continue

At Section 10 – *Has dumping caused material injury*, Customs and Border Protection found that the dumping of toilet paper from China and Indonesia has not caused the injury experienced by the Australian industry .

The information available shows that the volume of dumped toilet paper exported from China and Indonesia is relatively small in terms of the overall toilet paper market, however, as the exports were mainly focussed in the major sub-sector of the market (premium), the volume imported had a significant impact on the total Australian toilet paper market in 2007.

Customs and Border Protection examined the import data in CRE through to 23 November 2008, 20 days after the publication of SEF¹¹⁶, and found that imports of toilet paper from both China and Indonesia continued. In relation to the goods in the premium sub-sector examined for the purpose of assessing injury, *Select* Brand importations, importations from Indonesia and China ceased in March 2008 and May 2008 respectively.

Customs and Border Protection considers that dumping of the goods from China and Indonesia may continue.

11.4 Is material injury to the Australian industry foreseeable and imminent

In assessing whether material injury to the Australian industry from dumped goods from China and Indonesia is foreseeable and imminent¹¹⁷, Customs and Border Protection notes:

¹¹⁶ In accordance with s.269TEA(2).

¹¹⁷ In accordance with s.269TAE(2B).

- the volume of toilet paper exported from China and Indonesia was relatively small in terms of the retail sector, and by extension the toilet paper market; and
- the dumping margins for the majority of the goods from China and Indonesia were relatively small.

In relation to the goods in the premium sub-sector examined for the purpose of assessing injury, *Select* Brand importations, Customs and Border Protection noted the following:

- a press release by Woolworths announced conclusion of the contract for the supply of *Select* paper products from China and Indonesia¹¹⁸;
- advice by GHY and Pindo Deli is that there had been no exports of *Select* toilet paper from Indonesia since March 2008 and none from China since May 2008 – the cessation of imports from these sources was confirmed by Customs and Border Protection¹¹⁹; and
- imports of Woolworths *Select* Brand product could start again under a new contract to an overseas manufacturer – no pre-contract activity by Woolworths was in place at the time REP 138 was provided to the Minister for Home Affairs.

Customs and Border Protection is not satisfied that material injury caused by future dumping of the goods from China and Indonesia is threatened. Customs and Border Protection considers there is no change in circumstance that makes material injury to the Australian industry by dumped goods from China and Indonesia foreseeable and imminent.

11.4.1 Reinvestigation conclusion (effect of future dumping)

Customs and Border Protection concludes that:

- dumping of the goods from China and Indonesia will continue; but
- material injury to the Australian industry by dumped goods from China and Indonesia is not foreseeable and imminent.

Customs and Border Protection makes a new finding that:

- material injury to the Australian industry by dumped goods from China and Indonesia is not foreseeable and imminent.

In making this decision, Customs and Border Protection had regard to all relevant information and conclusions based on relevant information as outlined in Section 4 – *Reinvestigation Methodology*.

¹¹⁸ Page 1 Woolworths press release August 2008.

¹¹⁹ Page 1 GHY and Pindo Deli submission to the original investigation 9 December 2008.

12 CONCLUSION AND RECOMMENDATION

12.1 Conclusion

In relation to the core issues reinvestigated, a summary of Customs and Border Protection findings are below:

- the goods exported to Australia from China and Indonesia was dumped; and
- the Australian industry producing like goods suffered injury; but
- the injury experienced by the Australian industry was caused more by other factors than by the dumping of the goods exported from China and Indonesia;
- injury to the Australian industry caused by dumping of the goods exported from China and Indonesia was not material; and
- material injury to the Australian industry by the goods exported to Australia from China and Indonesia is not foreseeable and imminent.

12.2 Recommendation

Customs and Border Protection recommends that the Minister:

- revoke the former Minister's decision to publish a dumping duty notice imposing dumping duties on toilet paper from China (except Vinda Jiangmen) and Indonesia; and
- revoke the dumping duty notice published on 31 December 2008; and
- substitute a new decision not to publish a dumping duty notice, taking effect from 31 December 2008

If the Minister accepts this recommendation, to give effect to that decision, the Minister must sign the attached notice at Appendix 1.

13 APPENDICES

Appendix 1	Notice
Confidential Attachment A	Price relativities for ABC, KCA, SCA, imports from China and imports from Indonesia

CUSTOMS ACT 1901 - PART XVB

**REINVESTIGATION OF ALL FINDINGS IN REP 138
CERTAIN TOILET PAPER
EXPORTED TO AUSTRALIA FROM
THE PEOPLE'S REPUBLIC OF CHINA
AND
THE REPUBLIC OF INDONESIA**

Revocation of reviewable decision REP 158*Notice under section 269ZZM(4)*

The Australian Customs and Border Protection Service (Customs and Border Protection) has completed its reinvestigation of all findings made in REP 138 in respect of certain toilet paper (toilet paper) exported to Australia from the People's Republic of China (China) and the Republic of Indonesia (Indonesia).

Trade Measures Branch's Report 158 (REP 158) sets out the findings affirmed and new findings made by Customs and Border Protection as a result of the reinvestigation.

Customs and Border Protection has recommended that I revoke the former Minister for Justice and Customs' decision to publish a dumping duty notice (the reviewable decision) imposing dumping duties on toilet paper exported to Australia from China (except Vinda Paper (Jiangmen) Co Ltd) and Indonesia and substitute a new decision to not publish a dumping duty notice under section 269TG(2) of the *Customs Act 1901* (the Act).

I, ROBERT MCCLELLAND, Attorney-General, have considered, and accepted, the recommendations of Customs and Border Protection, the reasons for these recommendations, and the material findings of fact or law on which the recommendations are based as detailed in REP 158. I have decided to revoke the reviewable decision and substitute a new decision to not publish a dumping duty notice under section 269TG(2) of the Act. This decision will take effect from 31 December 2008.

I therefore hereby revoke the dumping duty notice published on 31 December 2008 in *The Australian* and the *Commonwealth Government Special Notices Gazette No. S292 and S293* imposing dumping duties on toilet paper exported to Australia from China (except Vinda Paper (Jiangmen) Co Ltd) and Indonesia.

Persons who have paid interim duty on toilet paper exported to Australia from China and Indonesia from 1 January 2009 may apply for a refund of this interim duty under Division 3 of Part III of the Act.

Interested parties, as defined, may seek a review of this decision by lodging an application with the Federal Court of Australia, in accordance with the

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requirements in the *Administrative Decisions Judicial Review Act 1975*, within 28 days of the publication of this notice.

Copies of Customs and Border Protection REP 158 are available on request from Trade Measures Branch, Customs and Border Protection, by telephone 02 6275 6547 or facsimile 02 6275 6990. REP 158 is also available on the internet at <http://www.customs.gov.au>.

Enquiries about this notice may be directed to Director Operational Support on telephone number (02) 6275 5740 or facsimile number (02) 6275 6888 or by email to tmpolicy@customs.gov.au.

ROBERT MCCLELLAND
Attorney General