



CUSTOMS ACT 1901 - PART XVB

**TRADE MEASURES**

**INITIATION REPORT NO. 138**

CONSIDERATION OF AN APPLICATION FOR  
ANTI-DUMPING AND COUNTERVAILING  
MEASURES ON  
CERTAIN TOILET PAPER EXPORTED FROM  
THE PEOPLE'S REPUBLIC OF CHINA

AND

ANTI-DUMPING MEASURES ON  
CERTAIN TOILET PAPER EXPORTED FROM  
INDONESIA

20 March 2008

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## Introduction

On 29 February 2008, Kimberly-Clark Australia Pty Limited (Kimberly-Clark) and SCA Hygiene Australasia Pty Ltd (SCA Hygiene), lodged an application with the Australian Customs Service (Customs) for the publication of a dumping and countervailing duty notice in respect of certain toilet paper (toilet paper) exported to Australia from the People's Republic of China (China) and a dumping duty notice in respect of toilet paper exported to Australia from the Republic of Indonesia (Indonesia). Kimberly-Clark and SCA Hygiene claim that they are the two main producers in Australia. The application was lodged in accordance with s269TB(4) of the *Customs Act 1901*<sup>1</sup>.

The applicants claimed that the Australian industry for toilet paper consists of five members being the applicants, ABC Tissue Products Pty Ltd (ABC Tissue), Merino Pty Ltd (Merino) and Encore Packaging Pty Ltd (Encore).

The applicants claim that recent increases in import volumes of premium grade toilet tissue from China and Indonesia, marketed by Woolworths Limited under the "Select" brand, have caused material injury to the Australia industry manufacturing like goods.

The applicants claimed material injury was being experienced in the form of:

- loss of market share;
- price depression;
- price suppression;
- reduced profit and profitability;
- reduced return on investment;
- reduced attractiveness to re-invest;
- underutilisation of production assets;
- increased inventory levels of like goods produced by the Australian industry; and
- reduced domestic revenues for premium and mid-range product lines.

The applicants claimed that toilet paper produced in China is subject to subsidisation through the following subsidy schemes:

- Interest rate subsidies;
- "Two Free/Three Half" Program;
- Income tax exemption for Foreign Investment Enterprises (FIEs);
- Income tax exemption based on location;
- Value added tax and tariff exemptions on imported equipment; and
- Domestic VAT refunds (for companies in Hainan Economic Development Zone).

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<sup>1</sup> References to legislation in the report refer to provisions of the *Customs Act 1901* unless explicitly stated otherwise.

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Australia's legislation in respect of countervailing investigations reflects Australia's obligation under the World Trade Organisation Agreement on Subsidies and Countervailing Measures (the SCM).

Under Article 13.1 of the SCM there is a requirement in the pre-initiation stage of any application for the Government of the exporting country concerned to be invited for consultations with a view to clarifying matters raised.

Following an invitation from Customs, consultations were held with officials from the Chinese Embassy on 14 March 2008.

Under subsection 269TC(1) the delegate of the Chief Executive Officer (CEO) of Customs must examine the application and within 20 days of lodgement decide whether or not to reject the application. The delegate's decision on whether or not to reject the application in this case must be made no later than 20 March 2008.

Subsection 269TC(1) specifies that if the CEO is not satisfied that:

- the application complies with subsection 269TB(4); or
- there is, or is likely to be established, an Australian industry in respect of like goods; or
- there appear to be reasonable grounds for:
  - the publication of a dumping duty notice and a countervailing duty notice in respect of the goods the subject of the application exported from China; and
  - the publication of a dumping duty notice in respect of the goods the subject of the application exported from Indonesia;

he or she shall reject the application.

This report addresses the above criteria.

## Does the application comply with s.269TB(4)?

Section 269TB(4) requires that the application must:

- be in writing;
- be in an approved form;
- contain such information as the form requires;
- be signed in the manner indicated in the form; and
- be supported by a sufficient part of the Australian industry.

### Documentary requirements

The applicants have lodged an '*Application for Dumping and Countervailing Duties*', using the Customs approved form. The application is in writing and has been properly signed by the consultant representing the applicants.

The application has been examined and Customs considers the application contains such information as the form requires.

The applicants have provided a non-confidential version of the application, which has been examined and, in Customs view, contains sufficient detail to allow a reasonable understanding of the substance of the information claimed to be confidential.

### Supported by a sufficient part of the Australian industry

An application is taken to be supported by a sufficient part of the Australian industry when the persons who produce or manufacture like goods in Australia and who support the application:

- account for more than 50 percent of the total production or manufacture of like goods by that part of the Australian industry that has expressed support or opposition to the application; and
- account for not less than 25 percent of the total production or manufacture of like goods in Australia.

In Appendix A1 of the application, the applicants have provided their production data and estimated the production volumes for the remaining Australian producers of toilet paper, using independent published data. ABC Tissue, Merino and Encore have not commented on the application.

The data shows that Kimberly-Clark and SCA Hygiene combined represent the significant majority and more than 50% of total Australian production.

Customs takes the view that the applicants, as the major Australian producers in terms of domestic production, can be taken to be representative of the

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Australian industry for the purposes of initiation. However, the final assessment of injury and its materiality will be in respect of the Australian industry as a whole and not simply that pertaining to the applicants.

## **Conclusion**

On the basis of the available evidence, Customs is satisfied that the application complies with sub-section 269TB(4).

**Is there, or is there likely to be established, an Australian industry in respect of like goods?**

**Company information – Application Sections A-1 & A-2**

**Australian industry**

The applicants identify the Australian industry for toilet paper as the applicants, ABC Tissue, Merino and Encore.

Kimberly-Clark is 100 per cent owned by the Kimberly-Clark Corporation, a publicly listed company on the US stock exchange.

SCA Hygiene is the Australian trading company and a wholly owned subsidiary of the consolidated holding company SCA Tissue Australia Pty Ltd (“SCA Tissue”).

**The imported and locally produced goods - Application Section A-3**

**The goods**

The goods the subject of the application (the goods) are toilet tissue in rolls, (commonly referred to as toilet paper), 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 tissue and jumbo toilet rolls are not the goods the subject of the application.

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%.

**Like goods**

s. 269T(1) defines like goods as follows:

“like goods”, 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 those of the goods under consideration.

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The Australian industry manufactures toilet tissue in rolls (commonly referred to as toilet paper), consistent 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.

### **Customs Assessment**

In respect of like goods Customs noted:

- that the physical characteristics of the Australian produced toilet paper and the imported toilet paper from China and Indonesia are very similar;
- a high degree of commercial likeness. The imported goods are directly competitive in the Australian market and it is usual that they are marketed within the same or similar price ranges;
- the goods have the same end use; and
- the applicants claim that goods are made in relatively similar production processes.

Based on the evidence available, Customs is satisfied that toilet paper produced by the applicants is like to the toilet paper imported from China and Indonesia.

Customs understands that "parent rolls (reels)" are large rolls of stock toilet paper from which the smaller rolls of toilet paper for end use by the consumer are made. The manufacture of parent rolls is described in the application as a stage in the manufacture of toilet rolls. Schedule 3 to the Customs Tariff notes that "Toilet or facial tissue stock" are in strips or rolls of a width exceeding 36cm and have a different classification to toilet paper.

Customs understands that jumbo toilet rolls are rolls of 200 to 800 metres length, as compared to 20 to 50 metres for toilet rolls, may be unperforated and have a different size core and are equivalent to 10 to 20 toilet rolls. Jumbo rolls are a commercial product targeted mainly for high traffic washrooms whereas toilet rolls are targeted mainly for the consumer market.

Customs propose to further consider and confirm its assessment of like goods during the investigation. This will include gaining satisfaction that the exclusion of parent reels, folded toilet tissue and jumbo toilet rolls from the definition of the goods is appropriate.

### **Manufactured in Australia**

Subsection 269T(2) and 269T(3) specify that for goods to be regarded as being produced in Australia:

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- they must be wholly or partly manufactured in Australia; and
- where the goods have been partly manufactured in Australia, then at least one substantial process in the manufacture of the goods must be carried out in Australia.

The application states that Kimberly-Clark manufactures toilet paper from pulp. The pulp is either imported or produced from local timber.

The application states SCA Hygiene's imported pulp is manufactured into toilet tissue paper via its conversion and paper mills.

Customs considers that the conversion of pulp to finished toilet tissue in roll form is a substantial process of manufacture.

### **Customs Assessment**

After reviewing the production process of each applicant as described in the application and the level of conversion costs as detailed in the confidential appendices, Customs is satisfied that both applicant companies undertake at least one substantial process of manufacture in Australia.

### **Conclusion**

Based on the evidence provided in the application Customs is satisfied that:

- there is an Australian industry producing like goods; and
- the goods produced in Australia are 'like goods' to the goods the subject of the application, in accordance with sub-section 269T(1).

## Injury to an Australian industry

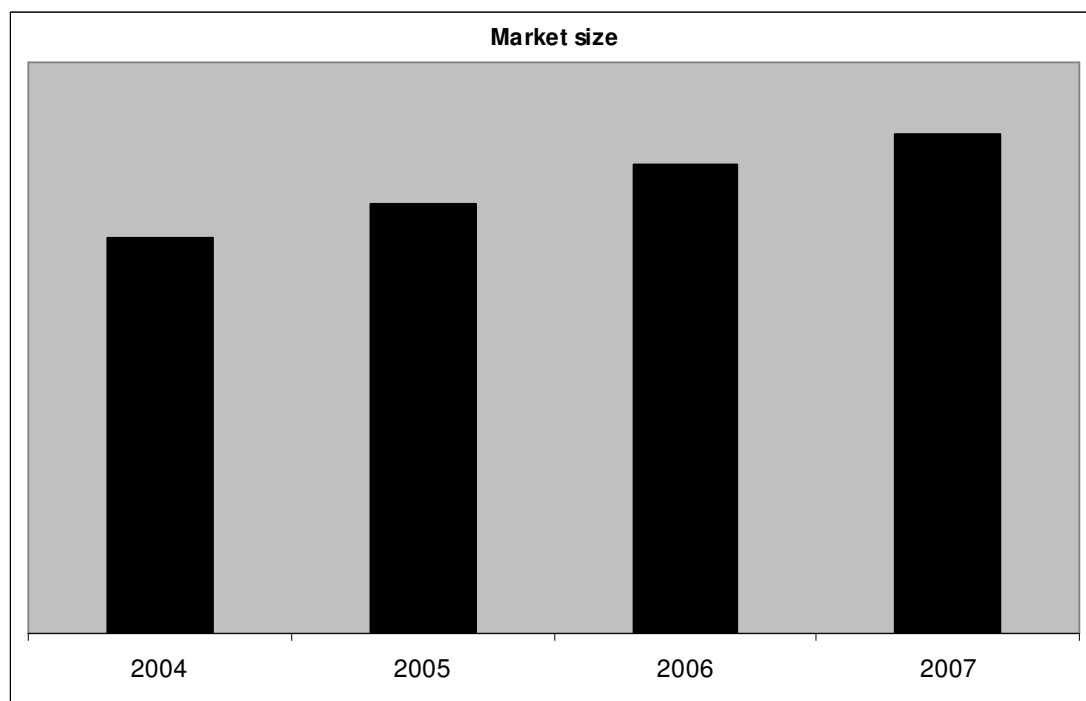
### Australian market – Application Section A-4

The applicants stated that toilet paper is sold to consumers through the retail market, which consists of two major retail chains and a number of independent operators. The applicants described the categories which distinguish the different product lines within the market as premium, mid-range, economy and house brand.

The Australian industry packages toilet tissue for retail sale in packs of 4, 6, 8, 9, 10, 12, 16, 18 or 24 rolls. Some packs (e.g. 4 rolls) may contain rolls with double the number of sheets to the traditional 180 to 200 sheet roll. Customs understands that these still fall within the definition of the goods.

The applicants provided Australian market data, as required by the application in Appendix A2.

Based on the sales data provided by the applicants and Customs import database, there has been an increase in the size of the Australian market for toilet paper as demonstrated in the graph below:



The detailed analysis is contained in **Confidential Appendix 1**.

### Applicants' sales – Application Section A-5

The applicants completed Appendix A3 Sales Turnover as required by the application.

In response to the requirement in the application for the completion of Appendix A4 domestic sales, Customs is satisfied with the information provided.

## **Financial and Accounting information – Application Section A-6**

In response to the request in the application to provide financial documents, Customs is satisfied with information provided for the purposes of initiation. The applicants also provided other information required by the application form, such as details of their accounting methodology.

## **Cost information – Application Section A-7**

The applicants provided cost and sales information as required by Appendix A6.1 and Appendix A6.2 as applicable.

The information was sufficient to undertake the necessary preliminary analysis of injury to the Australian industry over the period examined.

## **Material injury – Application Section A-8**

The applicants claim that injury to the Australian industry commenced in 2007, following the emergence of the Woolworths Limited's "Select" brand of imported toilet paper into the premium segment of the market.

To assess the economic condition of the Australian industry, Customs analysed the sales and cost data provided by the two applicant companies and information from Customs import database. The detailed analysis is contained in **Confidential Appendix 2**. Customs will approach the other industry members during the investigation regarding obtaining their data for injury analysis purposes.

The period of analysis was the calendar years 2004 to 2007.

## **Volume effects**

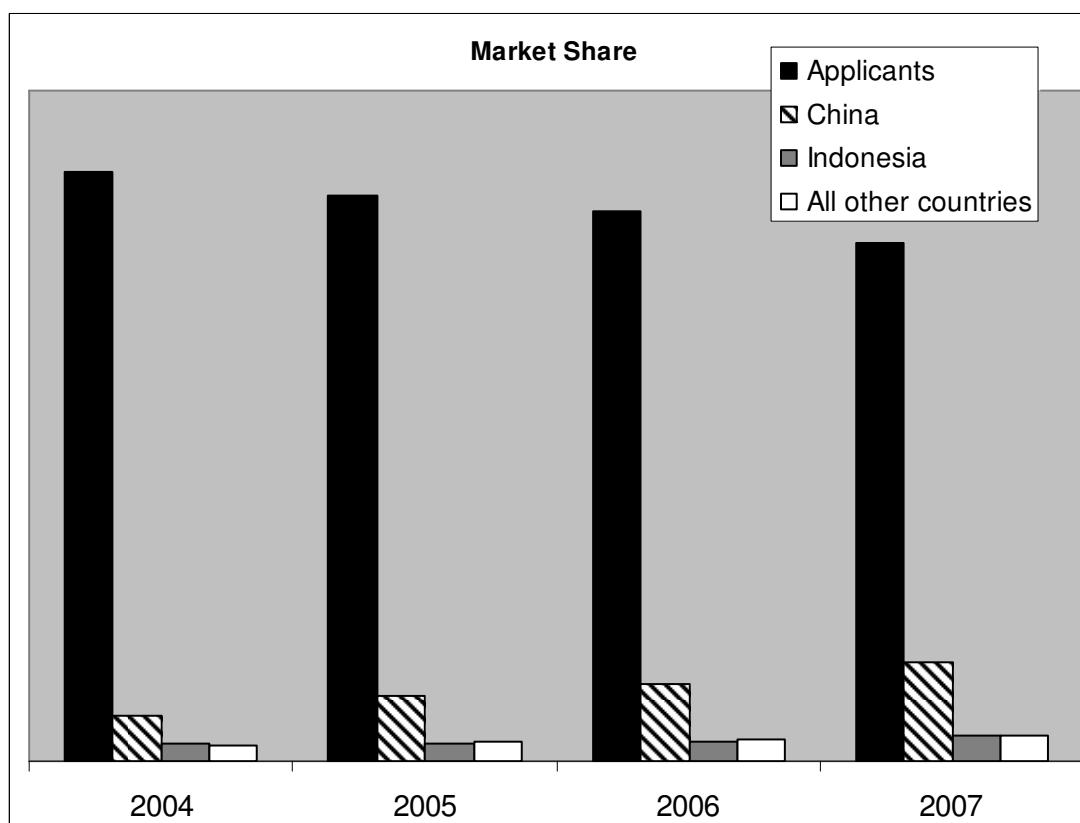
### **Sales Volume**

Customs' analysis of the sale volume data provided shows that sales volume remained relatively stable over the period 2004 to 2007, at a time of growth in the size of the market. The information provided in the application indicated that one of the applicants has spare capacity and would be able to increase supply to the market. Inquiries would need to be undertaken during the investigation in respect of the industry's capacity utilisation.

## **Market Share**

Customs undertook a market share analysis based on the applicants' data and imports identified in Customs data base. This was considered sufficient for the purpose of initiation. A more comprehensive analysis will be undertaken during the investigation once the other industry members' sales are known and imports are confirmed.

From the data available, the applicants' market share has decreased over the period 2004 to 2007, while the market shares of Chinese, Indonesian and other sourced imports have steadily increased as shown in the following graph:



## **Price effects**

### **Price depression**

Price depression occurs when there is a reduction in prices. Customs' analysis of the applicants' unit sales price data noted a decrease in sales price over the period 2005 to 2007 (as detailed in the price suppression graph below).

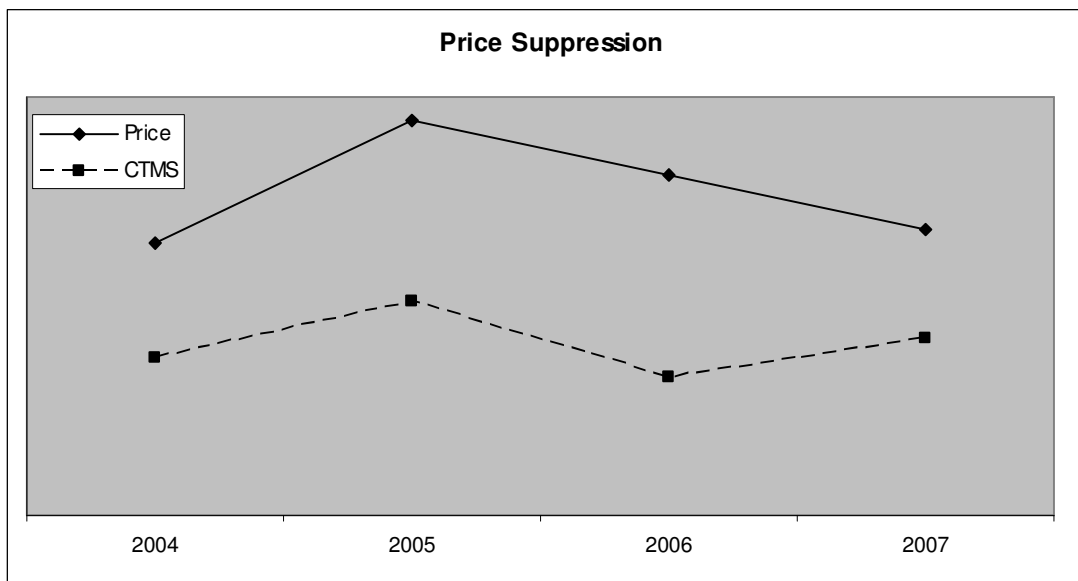
### **Price Suppression**

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

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The applicants claimed that the price undercutting by the alleged dumped and subsidised products was forcing the industry members to reduce their prices of like goods, in an attempt to maintain their sales volumes. The applicants claim that they were not in a position to increase prices to recoup increasing production costs.

Customs' analysis of the applicants' sales price and cost data for like goods showed that since 2006 there was an increase in costs at a time that the sales price was decreasing, resulting in price suppression, as detailed in the graph below:

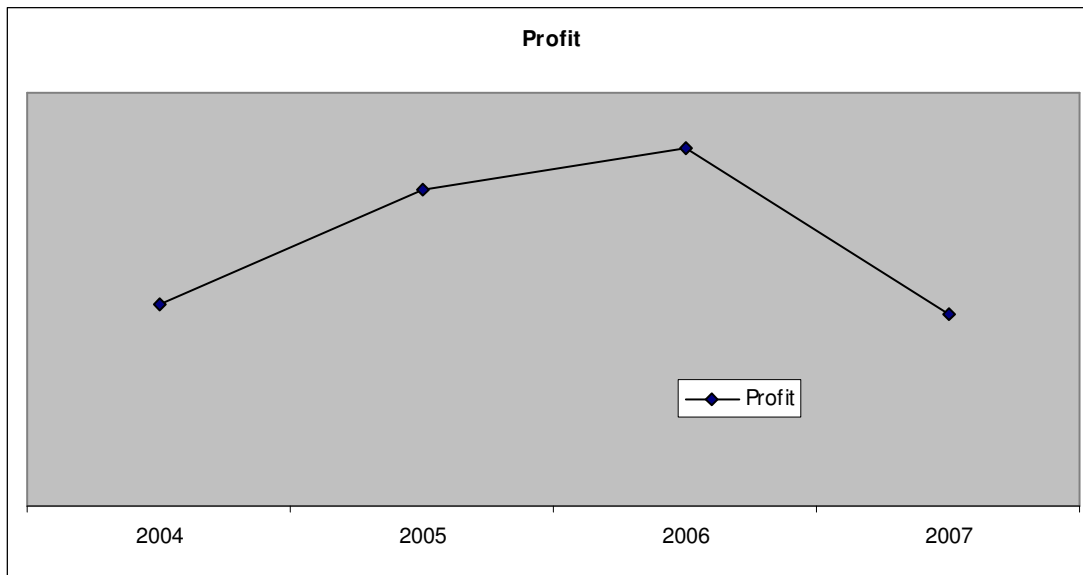


## Profit effects

### Profit

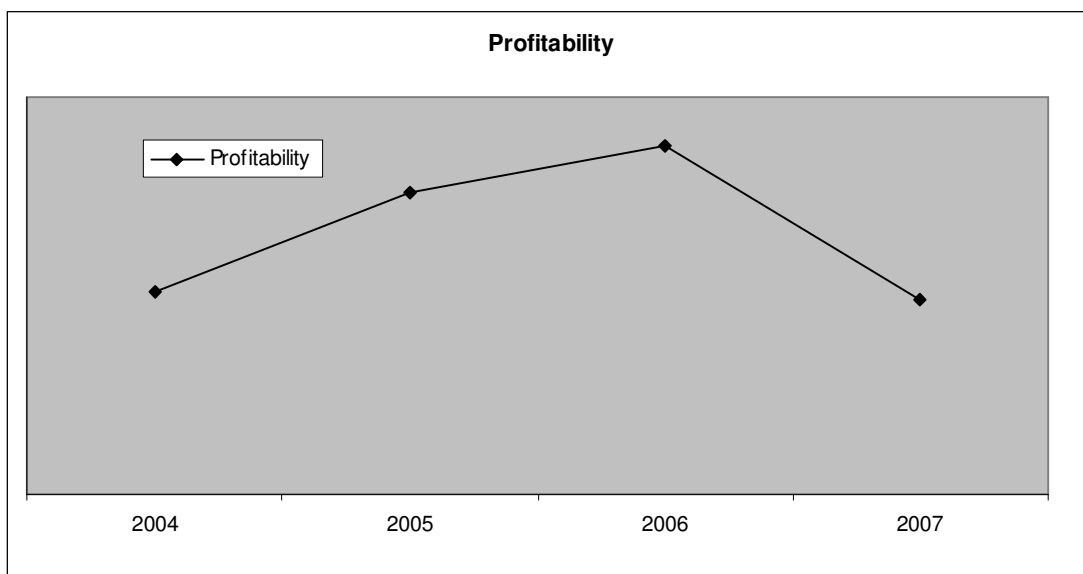
Customs' analysis of the application data showed a decrease in overall profit for the applicants' sales of like goods over the period of 2006 to 2007, as detailed in the graph below:

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### **Profitability**

Customs' analysis of the application data showed a decrease in profitability (profit as a percentage of sales price) for like goods over the period of 2006 to 2007, as detailed in the graph below:



### **Other injury indicators**

The applicants consider that the injurious imports have affected a range of "other economic factors" which reflect the relative economic health of the Australian industry's performance. The applicants claim that increases in imports from China and Indonesia have also resulted in:

- Reductions in return on investment;
- Reduced attractiveness to re-invest;
- Underutilisation of production assets; and

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- Increases in inventory levels of like goods.

### Reduced return on investment and attractiveness to re-invest

Customs examined the applicants' information in relation to return on investment noting a decrease in the return on like goods since 2005.

### Underutilisation

Customs examined the applicants' information in relation to capacity utilisation. While noting no significant change in the level of utilisation since 2005, Customs did note a degree of unused capacity in relation to like goods.

### Increased inventory levels

Customs examined the applicants' information in relation to inventory levels noting a gradual build up in stock since 2005.

### Assets

Injury in relation to asset levels was not claimed by the applicants. Customs examined the applicants' information but found no indication of injury.

### Capital investment

Injury in relation to the level of capital investment was not claimed by the applicants. Customs examined the applicants' information but found no indication of injury.

### Research and development

Injury in relation to the level of research and development was not claimed by the applicants. Customs examined the applicants' information but found no indication of injury.

### Employment and Wages

Injury in relation to the employment and wages was not claimed by the applicants. Customs examined the applicants' information but found no indication of injury.

### Other causes of injury

The applicant companies stated in the application that they cannot identify any factor(s) other than import competition from injurious imports as the cause of material injury to the Australian industry during 2007.

Customs will seek submissions during the investigation from interested parties in relation to other possible causes of injury to the Australian industry producing like goods.

## Conclusion

Following Customs analysis of the application data it is reasonable to conclude for initiation purposes that the Australian industry (as represented by the two applicant companies) has incurred injury over the period 2005 to 2007. This injury is indicated by loss of market share, price depression and suppression and reduced profit and profitability. This is also supported by a number of other injury indicators as detailed above.

## Dumping

### Source of exports

The application identifies China and Indonesia as the source of allegedly dumped exports causing material injury to the Australian industry. The application nominates a producer who exported the goods to Australia from China as:

- Gold Hong Ye Paper

and producers who exported the goods to Australia from Indonesia as:

- PT Lontar Papyrus,
- PT Pindo Deli, and
- Pt Univenus.

The application identifies Woolworths Limited as an importer of the allegedly dumped exports.

Customs confirmed that there have been exports to Australia of toilet paper from China (in excess of 4 per cent of total import volume) and Indonesia (also in excess of 4 per of total import volume) since 1 January 2004.

Customs database shows a large number of suppliers of toilet paper from China during the calendar year 2007. Customs notes that given this large number it may be impractical to establish dumping and subsidy margins for each exporter and that it may be necessary to select exporters for further investigation through a sampling procedure.

### Export price

#### China

The applicants provided published ABS data for toilet paper for the period of 2004 to 2007 from China and Indonesia as a basis for export price.

The information was considered reasonable and appropriate for consideration purposes following a comparison with Customs import data.

In Customs view, the information provided is relevant and timely and is a reasonable basis, for the purposed of initiation, on which to estimate export price.

## **Indonesia**

The applicants provided published ABS data for toilet paper for the period of 2004 to 2007.

The information was considered reasonable and appropriate for consideration purposes following a comparison with Customs import data.

In Customs view, the information provided is relevant and timely and is a reasonable basis, for the purpose of initiation, on which to estimate export price.

## **Selling price (normal value) in the exporter's domestic market**

### **China**

#### **Normal value information provided**

The applicants obtained a retail selling price for a brand of toilet paper sold in China that was of a similar weight to the product exported to Australia from published market data.

The price was adjusted downwards for the retailers' margin as detailed in the published market data and VAT. There was no adjustment made for domestic freight as this was thought to be equivalent to the inland freight for export sales.

In Customs view, the information provided (including the level of adjustment) is relevant and timely and is a reasonable basis, for the purpose of initiation, on which to estimate normal values.

#### **Market Situation**

The applicants claim that a 'market situation' occurs in respect of toilet paper from China due to the alleged existence of government subsidies. In their response to Section B-3-1 of the application the applicants claimed that a market situation exists in respect of the Chinese toilet paper industry as follows:

The applicants consider that a "market situation" occurs in respect of toilet tissue sold in China. For the reasons detailed in Section C-1 below, the toilet tissue industry (if not the total paper industry) in China has been impacted by a range of government policies and incentives that have substantially influenced prevailing prices and costs in the industry sector. This level of influence has resulted in artificially low selling prices and raw material input costs for Chinese toilet tissue manufacturers.

In their Section C-1 response, the applicants identify and detail six programs they claim to be countervailable subsidies in respect of the export of toilet paper from China and identify (but not detail) a further six potentially actionable subsidy programs. The response in Section C-1 does not further

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advance the claims concerning market situation but draws attention to a range of alleged subsidy programs potentially available to exporter/producers of toilet paper in China and particularly in respect of one exporter/producer.

The applicants do not rely on this claim to establish that the product is dumped but rather provide evidence of domestic selling prices in China (and Indonesia) for this purpose. The applicants propose that the domestic selling price information from Indonesia could be used as:

“surrogate” prima facie normal value information on the basis that a “market situation” prevails for toilet tissue sold in China.

### *Legislation*

The existence of a ‘market situation’ could affect Customs’ approach to calculating normal value. In broad terms, it is generally the case that the normal value of the goods is the price for like goods sold for home consumption in the country of export. Such a price is subject to adjustments under s269TAC(8) to ensure any differences do not affect the comparison with the export price.

One of the exceptions to using domestic selling prices for this purpose is set out in s269TAC(2)(a)(ii). Again in broad terms, that exception provides that the domestic selling prices are not an appropriate basis for normal value if the Minister is satisfied that a situation in the market has rendered domestic selling prices unsuitable for establishing normal values.

One of these situations may be where the domestic selling prices in the country of export have been materially affected by government influence rendering those prices unsuitable for use in establishing normal values.

### *Customs Assessment*

Customs has considered what has been provided by the applicants to support their claim of a ‘market situation’ and has formed the view that the information provided does not demonstrate that domestic selling prices in China are unsuitable. Customs notes that:

1. A degree of government influence can, and often does, exist without rendering the situation in the market so distorted that sales of the goods in that market are unsuitable for establishing normal value. The applicants have not provided evidence to support the materiality of the effect of the government influence. A ‘range’ of programs does not necessarily lead to materiality nor does the quantum of the estimated subsidy levels suggest that this might be the case in this instance.
2. In the absence of any evidence of regulatory control of domestic pricing, no evidence has been provided to demonstrate that the benefits of the subsidy programs applicable to toilet paper makers and their upstream suppliers pass through to a reduction in domestic selling prices.

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3. The detail provided, and estimations made, about the subsidy programs themselves are focused on a major exporter/producer and its affiliates and not the Chinese domestic toilet paper industry as a whole.
4. Principal reliance (for the existence of a market situation) on the outcomes of a recent USA countervailing investigation is not reasonable due to Australia's differing treatments of China's market economy status and the differing legislative frameworks.
5. The assertion that Chinese domestic toilet paper industry benefits from artificially low raw material costs is unsupported.

In its examination of subsidy allegations Customs will consider the effect, if any, on domestic sales prices and will make findings accordingly. The applicants may during the course of the investigation, submit further evidence concerning the suitability of domestic selling prices as a basis for the normal value of the goods from China.

Any information on this issue of the suitability of domestic selling prices must be provided in a timely manner to allow Customs to investigate the evidence provided, within the timeframe of the investigation, while ensuring that the requirements of procedural fairness are met.

### **Indonesia**

The applicants have provided domestic pricing information from an Indonesian manufacturer. To arrive at an ex-factory price an adjustment for PPN (value added tax on goods and services) has been made.

In Customs view, the information provided (including the level of adjustment) is relevant and timely and is a reasonable basis, for the purpose of initiation, on which to estimate normal values.

## **Estimate of normal value using another method**

### **China**

The applicants suggest using the Indonesian domestic selling prices as an alternative source of normal value given their view that a market situation exists. Customs consideration of this issue is addressed above.

### **Indonesia**

No other method of estimating normal value has been provided.

## Dumping margin

### China

The application estimated an average dumping margin for 2007 on toilet paper of 10.7 percent. Customs is satisfied that the dumping margin appears to be based on reasonable information that makes an appropriate comparison between normal value and export price and is not de minimis.

### Indonesia

The application estimated an average dumping margin for 2007 on toilet paper of 74.0 percent. Customs is satisfied that the dumping margin appears to be based on reasonable information that makes an appropriate comparison between normal value and export price and is not de minimis.

## Conclusion

Customs is satisfied that the applicants' claim that toilet paper has been exported to Australia from China and Indonesia at dumped prices is reasonable. Customs is also satisfied as a result of our preliminary analysis that the dumping margins are not negligible in terms of subsection 269TDA(1).

## Subsidisation

### Applicants' claims

The applicants have identified and explained the nature and detail of the following six alleged subsidy programs. They claim are available to members of the Asia Pulp and Paper ("APP") Group<sup>2</sup> of companies in China:

- Interest rate subsidies;
- "Two Free/Three Half" Program;
- Income tax exemption for Foreign Investment Enterprises (FIEs) ;
- Income tax exemption based on location;
- VAT and tariff exemptions on imported equipment; and
- Domestic VAT refunds (for companies in Hainan Economic Development Zone).

The applicants have identified but not explained the nature and detail of the following further six subsidy programs:

- Additional Special Economic Zone ("SEZ") incentives;
- Grants provided for export performance;
- Preferential loans;
- Relief from duties on imports;
- Reductions in land use fees; and
- Purchase of goods from State Owned Enterprises.

The applicants claim that the major exporter/producer, Gold Hong Ye, received similar benefits to another member of the APP Group that was investigated by the USA Department of Commerce in a recent USA dumping and countervailing investigation<sup>3</sup> concerning exports of coated free sheet paper from China, Indonesia and Korea.

The applicants claim that the programs are specific subsidies under s.269TAAC(1), constitute a benefit conferred by the Government of China and that the subsidy is actionable under Australia's countervailing provisions.

In respect of the particular Chinese exporter/producer the applicants claim that the relevant subsidies have provided a benefit to the exporter/producer which has enabled the company to manufacture and sell production outputs at

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<sup>2</sup> Which includes a major toilet paper exporter/producer that exported (or produced) toilet paper to Australia during the investigation period:

<sup>3</sup> Coated Free Sheet Paper from China, Final Affirmative Countervailable Duty Determination, 25 October 2007

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prices which are less than would normally be the case in the absence of the subsidies.

The applicants have estimated that the value of the benefit under the programs is likely to be in excess of the RMB 186.6 per metric tonne (or the equivalent of A\$29.22 per metric tonne) and in excess of 2.035 per cent ad valorem.

## Consultations with the Government of China

In accordance with the legislative requirements (S.269TB) and Article 13 of the SCM the Government of China (GPRC) was provided opportunities for pre-initiation consultations.

Chinese officials advised Customs that the position of the Government of China, was that, in their view, the application contained errors and conflicting information, lacked sufficient evidence and failed to meet the requirements for initiation. In doing so they made the following points:

- The applicant's reliance on the USA countervailing case was inappropriate as the USA determination contained serious mistakes which the GPRC have appealed to the WTO Dispute Settlement Body (WTO DSB). These mistakes included the use of incorrect benchmarks for loans and the mistaken identification of certain programs as specific;
- The application contains insufficient evidence to prove that Chinese enterprises received the alleged subsidies;
- The GPRC doubts the accuracy and authenticity of a report prepared by the American Forest & Paper Association<sup>4</sup> which the applicants in this case refer to in their application;
- The evidence presented by the applicants on injury and causal link is not sufficient; and
- The GPRC rejects the applicants' claim that a 'market situation' exists.

## Customs' assessment

The applicants have provided information about the nature of the alleged subsidy programs in detail and have provided the following supporting documents:

- a business report and company background information on the nominated exporter;

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<sup>4</sup> Application Public File Version – Attachment C-1.4

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- *Coated Free Sheet Paper from China, Final Affirmative Countervailable Duty Determination, 25 October 2007 and the Issues and Decision Memorandum* for the Final Determination;
- American Forest and Paper Association report on China's Subsidisation of its forests products industry; and
- information on benefits and programs available in the relevant industrial park.

In Customs' assessment two major issues are raised regarding the sufficiency of the evidence in support of the applicants' claims.

Firstly, as the applicants rely principally upon the outcomes of the recent USA countervailing investigation, Customs has considered whether this is relevant, sufficient and contemporary evidence to demonstrate reasonable grounds for the publication of a countervailing duty notice as a consequence of the current application.

Customs has examined the public reports of the USA case and the other supporting evidence (as detailed above) provided by the applicants. While noting that the USA treats China as a non-market economy and that there are differing legislative approaches, Customs still considers that facts established in the USA's investigation, which has reported on facts following in-country verification, to be relevant and reasonably reliable. In this regard Customs particularly notes:

- the USA found the existence of the same and specific programs that the applicants have claimed to be countervailable in respect of toilet paper from China;
- the goods the subject of the application are of the same general category of the goods the subject of the USA investigation;
- the APP company in the USA investigation is an affiliate of the company referred to by the applicants; and
- the net subsidy rates established.

Further, in this respect, Customs understands that the WTO DSB action taken by the GPRC and referred to above has been resolved without any DSB ruling resulting.

Customs considers that the applicants have established a sufficient link with the facts of the USA investigation and provided sufficient further supporting documents to support the claim that the identified schemes are likely to be available to producers and exporters of toilet paper in China.

Secondly, the applicants are seeking a countervailing duty notice against all exports of toilet paper from China, but the evidence provided largely deals with benefits that may have been conferred to a single exporter/producer.

In this regard, Customs' records indicate that the single exporter/producer referred to was the major source of Chinese toilet paper exported to Australia

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during calendar year 2007. Customs also notes that while some of the programs claimed have specific eligibility criteria, others are more general in nature. Customs considers it likely that those other programs may also be available to the other exporters and producers of toilet paper in China.

The applicants have estimated the subsidy benefits to of an amount which is not negligible under s269TDA(16)(b) (i.e. it is more than 2%, being relevant to China as a developing country).

The applicant's calculation attempts to quantify the subsidy amount of only three of the claimed programs and is merely estimation. Customs is aware that the applicants would have difficulty providing further and more accurate data in this regard, particularly in respect of the other claimed programs and whether or not particular enterprises actually received benefits under the programs.

Customs also noted the amounts of subsidy determined in the recent USA case and the range of the subsidy programs that the USA found to be countervailable. This range of programs included some schemes that would have been difficult for the applicants to estimate the net subsidy amount. Customs has therefore taken the USA determinations into account.

From the information available Customs is satisfied that it is reasonable to conclude the claimed subsidies are likely to exceed the negligible thresholds. (Refer **Confidential Appendix 3**).

The investigation into the alleged subsidies will determine whether there are countervailable subsidies and if so the quantum of any subsidy benefit. The investigation will be terminated if the countervailable subsidy proves to be negligible.

Other issues raised by the GPRC in respect of injury, causal link and 'market situation' have been addressed in other parts of this report.

### **Conclusion**

Customs is satisfied the applicants' claims that countervailable subsidies have been received in respect of toilet paper exported from China to Australia are reasonable. Customs is also satisfied following its preliminary analysis that the subsidy amount is likely to be more than 2%.

## Link between injury and dumped and subsidised imports

### Applicants' Claims

The applicants claim that dumped and subsidised imports from China and dumped imports from Indonesia have increased market share (by approximately 5 per cent since 2005) at the expense of sales of Australian production. Since 2005, coinciding with the introduction of "Woolworths' Select range of toilet tissue in late 2006, imported toilet tissue from China and Indonesia has gained a significant proportion of the growth on the Australian market.

Market share analysis by one of the applicants confirms that Woolworths' Select branded toilet tissue is experiencing faster rates of growth than the Australian market, particularly in the last quarter of 2007 where it is believed to have achieved 12.8 per cent market share in Woolworths' stores.

The increased volumes of injurious imports from China and Indonesia have been at declining prices since quarter four of 2006 and have caused the Australian industry to respond through price reductions to maintain sales volumes. The Australian industry lost market share, as prices undercut Australian equivalents by up to 20 per cent. The applicant industry's volumes in 2007 are at levels marginally below those achieved in 2004 and 2005, however, sales of imported Chinese and Indonesian toilet paper have increased market share at the applicants' expense.

The impact of the increased import volumes and reduced selling prices for imported toilet tissue from China and Indonesia is evident in the margins of each of the Australian industry producers. In aggregate, the applicants' profit declined by approximately 48 per cent in 2007 for the premium/mid-range products, with an overall decline for total toilet tissue profitability of 46.5 per cent in 2007. These declines are also apparent in unit profitability, as the applicants' sales margin was eroded in 2007 (along with decreases in market share).

The applicants are able demonstrate material injury in the form of lost market share, price depression, price suppression and price undercutting, as well as reductions in profit and profitability, coinciding with increased injurious import volumes at declining prices from China and Indonesia.

### Price undercutting

The application includes a price analysis of the retail shelf price (a comparison of the price per roll of the Woolworths select brand and the Australian industry brands) in 2007 to demonstrate the alleged price undercutting. While this is at the retail sale to customers (not the sale from the industry to the retailer), it is considered reasonable and reflective, for initiation purposes, of the possible level of price undercutting of the applicants' sales.

## **Customs' assessment**

Customs has noted that the volume of imported toilet paper from China and Indonesia increased in volume in 2006 and then again in 2007. Customs also noted that the unit price of imports from China and Indonesia was below the price of goods from other import sources.

As a result of price undercutting, it appears the applicants have not been able to increase prices to cover increasing costs, thereby suffering price suppression and decreased profits and profitability. For the purposes of considering the application, Customs considers that the cost structure of the two applicants as being representative of the costs (and therefore injury) incurred by the Australian industry.

## **Conclusion**

It is reasonable to conclude that the injury suffered by the applicants in the form of reduced prices, profits and profitability (which is not immaterial) may, for the purpose of assessing the application, be considered to be the result of price undercutting by dumped and subsidised imports.

Customs has reviewed the application and is satisfied that the claims made in the application and the supporting evidence establishes reasonable grounds for the publication of a dumping and countervailing duty notice.

## Overall Assessment

In respect of the application the CEO is satisfied that:

- the application complies with subsection 269TB(4);
- there is, or is likely to be established, an Australian industry in respect of like goods; and
- there appear to be reasonable grounds for:
  - the publication of a dumping duty notice and a countervailing duty notice in respect of the goods the subject of the application exported from China; and
  - the publication of a dumping duty notice in respect of the goods the subject of the application exported from Indonesia.