

**CUSTOMS ACT 1901 – PART XVB**  
**TRADE MEASURES REPORT No. 19**

**SECTION 269TAG INQUIRY:**  
**CERTAIN COATED PAPER**  
**FROM AUSTRIA AND FINLAND**

**31 March 2000**

## ABBREVIATIONS

ABS	Australian Bureau of Statistics
Act	<i>Customs Act 1901</i>
ADA	the former Anti-Dumping Authority
APPG	Amcor Printing Papers Group Ltd
Australian Paper	Australian Paper Pty Ltd
C&F	cost and freight
CEO	Chief Executive Officer
CTMS	cost to make and sell
Customs	Australian Customs Service
Dalton	Dalton Fine Paper
FOB	free-on-board
Forest Alliance	Forest Alliance Ltd
gsm	grams per square metre
Metsa-Serla	Metsa-Serla Oy
Minister	Minister for Justice and Customs
NIP	non-injurious price
Nordland	Nordland Papier Ag
Review Officer	Trade Measures Review Officer
Sappi Gratkorn	Sappi Gratkorn GmbH
STA	Sappi Trading Australia Pty Ltd
TPHG	The Paper House Group
USP	unsuppressed selling price
WTO	World Trade Organization

# CONTENTS

<b>ABBREVIATIONS .....</b>	<b>ii</b>
<b>CONTENTS .....</b>	<b>iii</b>
<b>1. SUMMARY &amp; RECOMMENDATIONS.....</b>	<b>1</b>
1.1 SUMMARY .....	1
1.2 RECOMMENDATIONS .....	1
<b>2. INTRODUCTION.....</b>	<b>2</b>
2.1 AUSTRALIA'S ANTI-DUMPING SYSTEM .....	2
2.2 BACKGROUND TO THIS INQUIRY .....	2
2.3 INQUIRY PROCESS.....	3
2.4 GOODS SUBJECT TO THIS INQUIRY .....	3
<b>3. THE AUSTRALIAN INDUSTRY AND MARKET .....</b>	<b>4</b>
3.1 LIKE GOODS .....	4
3.2 THE AUSTRALIAN INDUSTRY.....	4
3.3 PRODUCTION OF COATED PAPER .....	4
3.4 MARKET STRUCTURE.....	5
3.5 MARKET SIZE .....	6
<b>4. THE DUMPING INQUIRY .....</b>	<b>7</b>
4.1 EXPORT PRICES .....	7
4.2 NORMAL VALUES .....	8
4.3 DUMPING MARGINS .....	10
4.4 NON-INJURIOUS PRICE.....	11
<b>5. THE ECONOMIC CONDITION OF THE INDUSTRY .....</b>	<b>20</b>
5.1 VOLUME TRENDS.....	20
5.2 PRICE TRENDS.....	21
5.3 PROFIT AND PROFITABILITY .....	23
<b>6. THREAT OF DUMPING CAUSING MATERIAL INJURY .....</b>	<b>24</b>
<b>7. CONCLUSIONS.....</b>	<b>25</b>
7.1 SAPPI GRATKORN OF AUSTRIA .....	25
7.2 METSA-SERLA AND FOREST ALLIANCE OF FINLAND .....	26
<b>8. RECOMMENDATIONS.....</b>	<b>27</b>
8.1 SAPPI GRATKORN OF AUSTRIA .....	27
8.2 METSA-SERLA AND FOREST ALLIANCE OF FINLAND .....	27
<b>9. EVIDENCE RELIED UPON BY CUSTOMS .....</b>	<b>28</b>
<b>10. GLOSSARY .....</b>	<b>29</b>
<b>11. LIST OF APPENDICES .....</b>	<b>36</b>

# **1. SUMMARY & RECOMMENDATIONS**

## **1.1 Summary**

Dumping duty notices applying to exports of certain coated paper from Austria by Sappi Gratkorn GmbH (Sappi Gratkorn) were revoked in October 1999. A price undertaking still applies to exports of certain coated paper from Finland by Metsa-Serla Oy (Metsa-Serla).

The Australian Customs Service (Customs) has re-examined whether anti-dumping measures should be imposed on exports of the goods by Sappi Gratkorn and whether the price undertaking applying to exports of the goods by Metsa-Serla is set at the appropriate level.

Customs found the volume of dumped exports from Austria, over a reasonable examination period, did not exceed 3 per cent of the total Australian imports. Customs considers there is no imminent and foreseeable threat of substantially increased dumped exports from Austria and consequential material injury to the Australian industry.

In relation to Metsa-Serla of Finland, Customs found the non-injurious prices (NIPs) for A1 and A2 grade coated papers have changed. It is the NIP, in the Metsa-Serla case, which has been and will remain the operative measure i.e., the level at which price undertakings should be set to remove material injury to the Australian industry that is due to dumping. The effect of the revised NIPs is to increase the operative measure for A1 grade, and decrease the operative measure for A2 grade coated paper exported to Australia.

## **1.2 Recommendations**

Customs has already recommended to the Minister for Justice and Customs (the Minister) that she determine certain variable factors and dumping margins in respect of Sappi Gratkorn and refer the matter back to the Chief Executive Officer (CEO) of Customs for termination in accordance with s. 269TDA(3) of the *Customs Act 1901* (the Act).

In relation to Metsa-Serla, Customs now recommends the Minister sign a notice under s. 269ZDB of the Act, declaring that if, before a date specified in the declaration, the terms of the undertaking are altered in a manner specified in the declaration, the undertaking as so varied will be acceptable to the Minister.

The recommendations are detailed at section 8 of this report.

## **2. INTRODUCTION**

### **2.1 Australia's anti-dumping system**

Australia's anti-dumping and countervailing legislation conforms with the provisions of the World Trade Organization (WTO) Anti-Dumping Agreement and Agreement on Subsidies and Countervailing Measures.

Under section 269TAG of the Customs Act 1901 (the Act), the Minister can initiate an investigation into the need to take anti-dumping measures in respect of goods although no application has been made under section 269TB of the Act. The Minister may take anti-dumping measures as a result of the investigation.

### **2.2 Background to this inquiry**

This inquiry follows a Federal Court decision setting aside the anti-dumping measures applying to exports of the goods from Nordland Papier Ag (Nordland) of Germany. The Federal Court directed that the matter be remitted to the Minister 'to be determined according to law'. Nordland provided substantive evidence to support its claim that it was not exporting the goods to Australia at dumped prices. Consequently, Nordland was not included in this inquiry.

Anti-dumping measures applying to Sappi Gratkorn of Austria and Metsa-Serla of Finland were effected in the same manner as those for Nordland that were subject to the court decision. Dumping duty notices applying to Sappi Gratkorn exports of the goods were subsequently revoked. A price undertaking still applies to exports of the goods by Metsa-Serla.

The Minister directed Customs to commence an inquiry, under s. 269TAG of the Act, to re-examine anti-dumping matters in respect of certain coated paper exported to Australia by Sappi Gratkorn and Metsa-Serla.

Specifically, the Minister directed Customs to re-examine whether anti-dumping measures should be imposed on exports of the goods by Sappi Gratkorn and whether the price undertaking applying to exports of the goods by Metsa-Serla is set at the appropriate level. The Minister's direction was that the conduct of the inquiry be in accordance with the provisions of Part XVB of the *Customs Act 1901* and be consistent with Australia's obligation under the WTO agreement.

During the course of this inquiry it became known to Customs that Metsa-Serla had restructured and the exporting company is now called Forest Alliance Ltd (Forest Alliance). For the purpose of this report, any reference to Metsa-Serla or Forest Alliance should be read as if these were the same exporter.

## 2.3 Inquiry process

Customs initiated the inquiry on 29 October 1999 and on that day placed a notice in *The Australian Financial Review* inviting interested parties to provide written submissions in response to that notice. In addition, an Australian Customs Dumping Notice (No. 99/046) (see appendix 1) was issued on 29 October 1999. The notices called for submissions to be lodged by 8 December 1999.

Customs received submissions from a number of interested parties, including the Australian industry, Sappi Gratkorn and Metsa-Serla. Customs has undertaken visits to the Australian industry, certain importers and exporter's agents, and Sappi Gratkorn. Customs has maintained a public file upon which it has placed non-confidential versions of submissions to the inquiry, Customs visit reports and other relevant information.

Customs issued a statement of essential facts on 16 February 2000. The statement outlined the facts upon which Customs proposed to base its report to the Minister. Interested parties had 20 days to respond and lodge submissions in respect of the statement of essential facts. Customs received responses to the statement of essential facts from Australian Paper and from representatives of Sappi Gratkorn and Metsa-Serla. The responses were taken into account in formulating the recommendations of this final report.

Any interested party may apply for a review of the Minister's decision to publish or not to publish dumping duty notices. Applications must be lodged with the Trade Measures Review Officer (Review Officer) within 30 days after a public notice of the decision is published in a national newspaper. The Review Officer must make recommendations to the Minister within 60 days of the public notification of the review.

## 2.4 Goods subject to this inquiry

Coated papers covered by the inquiry are woodfree ( $\leq 10\%$  mechanical pulp content) white papers coated both sides and sold in sheets. These sheets have a nominal weight from 90 to 150 grams per square metre (gsm), generally referred to as A1 grade and A2 grade coated paper (A1 grade has a coating weight of more than 20 gsm per side and A2 has approximately 14 to 20 gsm per side) (the goods). The goods are currently classified within sub-heading 4810.11.90, statistical code 28, in Schedule 3 to the *Customs Tariff Act 1995*.

Coated paper is used in printing a wide range of products. It is commonly referred to in the industry as being of A1, A2 or A3 grade. A1 grade is used primarily in high quality art brochures such as prospectuses and annual reports. The uses for A2 include magazines, booklets, posters, reports and promotional material. The A3 grade is used in the lower quality printing including that for fliers, brochures and lighter weight magazines.

## **3. The Australian industry and market**

### **3.1 Like goods**

Section 269T(1) of the Act 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.

Customs and the former Anti-Dumping Authority (ADA) have found in previous inquiries that coated papers manufactured in Australia are like goods to the coated papers exported to Australia by Sappi Gratkorn and Metsa-Serla.

Based on the evidence available in this inquiry, Customs confirms its view that the coated papers produced by Australian Paper Pty Ltd (Australian Paper) are like goods, in terms of s. 269T(1) of the Act, to the coated papers exported to Australia by Sappi Gratkorn and Metsa-Serla.

### **3.2 The Australian industry**

Australian Paper is the sole producer of coated paper in Australia. It produces various paper and cardboard products at the Burnie (Tas), Wesley Vale (Tas), Maryvale (Vic) and Shoalhaven (NSW) mills whilst the sales and marketing arm is located in Melbourne, Victoria.

Australian Paper is part of the Amcor group, and reports to Amcor through Amcor Printing Papers Group Ltd (APPG). Amcor paper merchants The Paper House Group (TPHG), Dalton Fine Paper (Dalton) and Amcor Trading also report to Amcor through APPG. Australian Paper is responsible for paper production (copy paper, converting papers, graphic papers, specialty and sack/bag), sales and marketing.

Amcor has announced it will list a new company, PaperlinX Limited, which will conduct the paper manufacturing and distribution businesses currently conducted by APPG. Amcor intends PaperlinX Limited to become independent of Amcor.

### **3.3 Production of coated paper**

Australian Paper manufactures its base paper at its Burnie mill. The base paper was made from Australian Paper's own pulp manufacturing process until October 1998, after which time all chemical pulp requirements were imported. The term 'woodfree' refers to paper made from chemical pulp.

The base paper is manufactured by first suspending the pulp in a solution of water and fillers such as clay, and certain chemicals to give the paper its desired physical characteristics. The mixture, known as 'stock' or 'furnish' is then spread onto a belt and is transported through rollers to remove water. When sufficient water has been removed, the material forms a self-supporting paper ribbon that is subjected to heat and pressure to dry the paper further. The paper is then wound onto large reels.

The base paper reels are transported approximately 60 kilometres to the Wesley Vale mill for coating and cutting into reels or sheets. The coater is equipped with two coating heads, which apply one coating to each side of the paper. Excess coating is scraped off with steel blades. The paper is then dried by a combination of infra-red drying and drying by steam heated cylinders. The operation is computer controlled. The coating formulation, prepared in a coating 'kitchen' is varied as required to achieve the desired finish.

Australian Paper is now in the final stages of implementing new pre-coating equipment and will be able to produce a double-coated paper. Once in operation, the base paper can be directed through the pre-coater for a simultaneous application of coating on both sides, before drying and proceeding to the existing two coating heads.

Subsection 269T(4) of the Act specifies that the Australian industry consists of the producer or producers of like goods in Australia.

Subsections 269T(2) and 269T(3) of the Act specify that for goods, other than non-manufactured raw products, to be regarded as produced in Australia:

- 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.

Customs has previously examined the manufacturing operations of Australian Paper and was satisfied these requirements were met. Customs confirms its view that Australian Paper comprises the coated paper manufacturing industry in Australia.

### **3.4 Market structure**

The Australian market for coated paper is supplied by local production and by imports from a large number of countries. Customs estimates Australian Paper sales represented approximately 22% of market share in Australia in 1999. The major sources of imports were Indonesia (24%), Germany (12%), Italy (13%) and Korea (11%).

Coated paper is typically purchased from producers by distributors (or merchants) which then supply end-users such as printers and publishers. The merchants may arrange for coated paper to be delivered directly from producer to end-user (indent sales) or may hold stock for end-users to purchase as required.

Selling agents for the exporters also arrange sales whereby the goods are delivered directly from the mill to the merchant or end-user. Typically, the agent receives a commission, based on sales value, from the exporter.

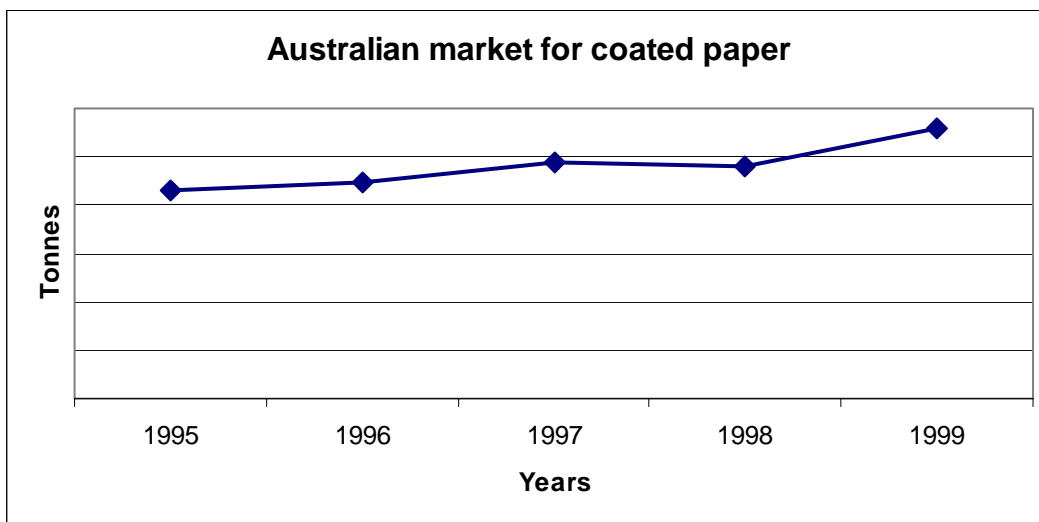
In this context, the locally produced coated paper competes with all imported coated paper (as defined in the 'goods subject of this inquiry'), albeit at varying levels of trade.

### 3.5 Market size

Customs estimated the size of the Australian market (in tonnes) for coated paper for 1998 and 1999 using the information on sales provided by Australian Paper and import data from Customs commercial database. Customs used the information from the ADA Report No. 185 (p. 64) for the years 1995, 1996 and 1997.

Customs found that from 1997 to 1998 the market for coated paper decreased by about 1%, but then increased by about 16% from 1998 to 1999. The overall increase from 1997 to 1999 was about 14%.

The following graph illustrates the market size trend since 1995.



## **4. The dumping inquiry**

Dumping occurs when the export price of a product is less than the normal value of the product. This section explains the results of Customs inquiries on this aspect.

### **4.1 Export prices**

#### **4.1.1 Sappi Gratkorn of Austria**

Customs received a submission from Sappi Gratkorn and undertook a visit to its mill in Austria. Customs visited two importers that have been involved in the purchase and importation of coated paper from Sappi Gratkorn since January 1998. These were Dalton and TPHG. Customs also visited Sappi Trading Australia Pty Ltd (STA), the Sappi Gratkorn agent in Australia. The conclusions in respect of Sappi Gratkorn's export prices have been based on the findings of the visit reports for these four companies.

Customs found that Sappi Gratkorn has exported coated paper to Australia throughout the inquiry period. In trading arrangements applicable to exports up to and including June 1998, the coated paper has been purchased from Sappi Gratkorn by the importers, Dalton and TPHG. Customs found these purchases of the goods were arms length transactions. Customs has assessed export prices for these transactions in terms of s. 269TAB(1)(a) of the Act, using the cost and freight (C&F) price less the cost of overseas freight.

In relation to Sappi Gratkorn's exports of the goods from July 1998, Customs found the goods have been purchased by the importers, Dalton and TPHG, in arms length transactions. However, the goods were purchased from parties other than the exporter, i.e. Dalton and TPHG purchased the goods from Specialty Pulp Services Ltd of Hong Kong, or from STA. The latter two companies act as selling agents for Sappi Gratkorn. Customs has determined export prices for these transactions under s. 269TAB(1)(c) of the Act, using the C&F price less the cost of overseas freight.

Export price calculations for Sappi Gratkorn form confidential appendix 2.

#### **4.1.2 Metsa-Serla and Forest Alliance of Finland**

Customs received a submission from Metsa-Serla but decided not to conduct a visit to the Metsa-Serla mill. The reasons for this decision are discussed in detail in the normal value section of this report.

Forest Alliance has exported only a very small quantity of the goods since a price undertaking offered by Metsa-Serla was accepted by the Minister and became effective in May 1998. The export prices were higher than the level

of the existing price undertaking. It is not necessary for Customs to re-ascertain an export price for the purpose of reviewing the level of the price undertaking, as the level of the operative measure (lower of the normal value or NIP) will determine the level of the price undertaking.

## **4.2 Normal Values**

### **4.2.1 Sappi Gratkorn of Austria**

Sappi Gratkorn is a manufacturer of coated paper. It exports the goods to various countries including Australia and it sells the goods on the domestic market in Austria.

Sappi Gratkorn's domestic sales are made either to distributors (also known as merchants) or, by indent arrangements, to printers. The indent arrangement is such that the goods are delivered directly from the mill to the printer, but the invoicing and payment is through a merchant. In addition to this arrangement, where Sappi Gratkorn is unable to supply the printers directly, it arranges for merchants to supply from their stocks. Sappi Gratkorn reimburses the merchants for the price differential.

Customs noted the volume of domestic sales of like goods over the inquiry period substantially exceeded the volume of the goods exported to Australia in the same period. No factors were identified, in terms of the situation in the domestic market of Austria, that would make the domestic sales of like goods by Sappi Gratkorn not suitable for use in determining normal values.

However, Customs considers the cost information obtained from Sappi Gratkorn was not sufficiently reliable for assessing ordinary course of trade. In the absence of an ability to assess ordinary course of trade, Customs considers it is inappropriate to use Sappi Gratkorn's domestic sales for determining normal value under s. 269TAC(1) of the Act.

As the cost information is unreliable, a constructed normal value in terms of s. 269TAC(2)(c) of the Act is also considered inappropriate.

Customs considers there was insufficient information available to determine normal values for Sappi Gratkorn under s.269TAC(2)(d) of the Act, using third country sales.

Having regard to all the relevant information, Customs considers normal values for Sappi Gratkorn should be determined under s. 269TAC(6) of the Act, using the sales to a domestic customer selected by Customs. Customs noted a considerable proportion of Sappi Gratkorn's domestic sales was made to the selected customer. Customs has used only those selling prices which appear to be profitable, having regard to unverified cost information, in determining normal values.

Given the fluctuations in Sappi Gratkorn's domestic selling prices over any given period, Customs considers the use of weighted averages of normal values for each calendar quarter are warranted. This does not disguise the apparent, though infrequent price changes, but it does avoid the possible distortion in dumping margins that arises due to the inappropriate matching of export prices and normal values. Mismatches occur due to differences in product type (gsm or sheet size), packing (reamed or flagged) or distribution channel (stock or indent). These were all found to be reasons for slight price variations, though were often unable to be identified separately in selling price information for domestic and/or export sales.

In order to ensure proper comparison between export prices and normal values, Customs considers the normal values should incorporate adjustments to take account of:

- early payment discounts on domestic and export sales;
- domestic and export credit terms;
- certain rebates on domestic and export sales;
- variable and fixed commissions for domestic sales; and
- export selling commission.

Normal value calculations for Sappi Gratkorn form confidential appendix 3.

#### **4.2.2 Metsa-Serla and Forest Alliance of Finland**

Customs received a submission from Metsa-Serla which included basic information in respect of its cost to make and sell (CTMS) and selling prices in Finland. The company undertook to provide any other information that Customs may require and invited Customs to visit for verification purposes.

Metsa-Serla provided only limited information to Customs in the first instance. This was because it was of the view that this inquiry stood to be relevant to that company only in the event that NIP was reviewed downwards. Metsa-Serla suggested that its current domestic selling prices would result in a normal value calculation at a level that, if found to be the operative measure, would not permit it to be competitive in Australia and therefore it would not recommence exports to Australia.

Customs decided not to visit Metsa-Serla for the following reasons:

- it appeared unlikely any revised normal value would become the operative measure in respect of anti-dumping measures applicable to exports of the goods by Metsa-Serla;
- Metsa-Serla had not exported the goods recently, therefore post-export costs applicable to the goods could not be obtained for the purpose of calculating any revised NIP; and
- the content of the Metsa-Serla submission provided was not of a standard that warranted a verification visit.

Accordingly, Customs considers there are no grounds to alter the existing normal value for Metsa-Serla.

Australian Paper submitted, in response to the statement of essential facts, that “in the light of the fall in value of the Australian Dollar and the rising prices announced for coated paper in Europe, there appear to be grounds for an increased normal value.” The assertion in respect of selling prices cannot be tested by Customs, as the information provided by Metsa-Serla is not sufficiently up to date. Customs notes the rate of exchange between the Finland Markka and the Australian Dollar is similar now to what it was at the time the price undertaking was accepted. In fact, the Australian Dollar has strengthened slightly against the Markka since mid 1998. In any case, the revised NIP is lower than the existing normal value and will therefore continue to be the operative measure.

### **4.3 Dumping margins**

#### **4.3.1 Sappi Gratkorn of Austria**

Dumping margins for Sappi Gratkorn were calculated by comparing export prices determined in respect of individual transactions with weighted averages of corresponding normal values, for quarterly periods.

Notwithstanding the anti-dumping measures applying to Sappi Gratkorn (in the form of provisional measures or interim dumping duties) from November 1997 until late October 1999, Customs found dumping in 1998 and 1999. The average dumping margin for individual transactions over 1998 was around 12% and for 1999 was about 2.5%. These findings arise from the comparison of export prices, since 1 January 1998, with the corresponding quarterly weighted average normal values. The findings are not a measure of export prices against the normal value that was ascertained by the ADA in 1998. The average dumping margin for individual transactions, over 1998 and 1999, if export prices are compared to the previously ascertained normal value were 2.2% and 2.9% respectively.

There was a clear trend away from dumping during the course of 1998 and 1999 (to the end of October). Only a very small volume of exports were found to be dumped since March 1999.

In response to the statement of essential facts, Australian Paper submitted that “Unless export prices rise significantly to match announced domestic price increases and currency movements, the dumping margin will increase by around 10%, and more if the Australian dollar continues its fall.” Customs has noted the Sappi Gratkorn export prices have increased since the time of the Customs verification visits in late 1999. Customs received information to support claims that there are further increases imminent. Customs also observed that the Australian Dollar has, contrary to Australian Paper’s comments, strengthened slightly against the Austrian Schilling and the Euro since the time of its verification visits. Consequently, Customs considers that

dumping margins established as a result of its verification visits are still appropriate.

Dumping margin calculations for Sappi Gratkorn form confidential appendix 4.

## **4.4 Non-injurious price**

Australia is a signatory to the WTO Anti-Dumping Agreement which states:

*'It is desirable....that the [anti-dumping] duty be less than the margin [of dumping], if such lesser duty would be adequate to remove the injury to the domestic industry.'*

Australian legislation reflects this principle in s. 8(5A) of the *Customs Tariff (Anti-Dumping) Act 1975*, which refers to the desirability of ensuring that the amount of dumping duty is not greater than is necessary to prevent injury to the local industry.

Anti-dumping duties are normally based on free-on-board (FOB) prices in the country of export. Therefore, a NIP is normally calculated in FOB terms for the country of export.

Section 269TACA of the Act defines the NIP as the minimum price necessary "to prevent the injury, or a recurrence of the injury, or to remove the hindrance, referred to in paragraph 269TG(1)(b) or (2)(b)" of the Act.

The usual method for calculating a NIP is to first determine an 'unsuppressed selling price' (USP) in Australia for the locally produced goods. This is the price at which the Australian industry might reasonably expect to sell its goods in the Australian market, if prices in that market were not affected by dumped imports. The NIP would then be calculated by working back to an FOB price by deducting all relevant post-export costs and by deducting, where appropriate, an amount for importer profit.

In determining the USP, Customs preference is to use market place information. Specifically, Customs looks for prices of the locally produced goods at a time when the market was not affected by dumping. If this is not possible, Customs may use the Australian industry's cost to make and sell with an addition for an amount for profit (if any). In determining an amount for profit, Customs again prefers to look to the market for guidance.

### **4.4.1 Existing non-injurious price**

The ADA determined the USP using the industry's "average cost to make and sell for 1997 (adjusted to remove the effect of the disruption at the Wesley Vale plant on costs) plus a profit, equivalent to the current long term bond rate (i.e. 6 per cent)". The ADA deducted amounts for all relevant post-export costs to calculate the NIP.

#### 4.4.2 Options for determining unsuppressed selling price for this inquiry

##### Australian industry's selling prices

An option for determining the USP by reference to the market place is to examine the Australian industry's selling prices for a certain period. The local industry has claimed that a weighted average selling price for coated paper sold by Australian Paper in 1995-96 is a relevant basis for establishing the USP and therefore the NIP. However, in the Customs report and preliminary finding 97/009, it is stated that "The applicant (Australian Paper) alleged it had suffered material injury from dumped exports of the goods since 1 January 1996." In addition, Customs and the ADA in their respective inquiries of 1997 and 1998, made clear findings of dumping in early 1996 for certain countries with significant market share. For these reasons, Customs considers the market was affected by dumping in early 1996 and it is therefore inappropriate to use the Australian industry's 1995-96 selling prices for determining the USP.

In its response to the statement of essential facts, Australian Paper claimed dumping was at its lowest level during 1995-96. Customs cannot accept this assertion given the findings within ADA report no. 185 and the claims by Australian Paper (in the context of its original application) that material injury from dumped imports commenced in 1996.

As Customs and the ADA regarded 1995 as the base year for the purpose of assessing material injury in the initial inquiries, Customs considered the use of Australian Paper's 1995 selling prices for the purpose of determining the USP for this review. The Customs and preliminary finding report No. 97/009 states:

*'The Australian market for coated paper is 80% supplied by imports. This situation results in Australian coated paper prices closely following world prices because exporters are competing in a global market. World paper prices are closely tied to world pulp prices, which are cyclical. Pulp prices peaked around October 1995 in the region of USD1,000/tonne, had fallen below USD500/tonne by March 1996 and have since risen above USD600/tonne with relatively minor fluctuations.'*

Australian Paper, in its response to the statement of essential facts, claimed "This peak was, in fact, short and savage, lasting only one month, with the entire period above USD700/tonne being about one year." Customs acknowledges that some pulp price indexes may support this claim. However, the pulp prices listed in the *AUSNEWZ Pulp & Paper Intelligence Report*, to which Customs subscribes, show that pulp prices were in excess of USD1,000/tonne for much of 1995.

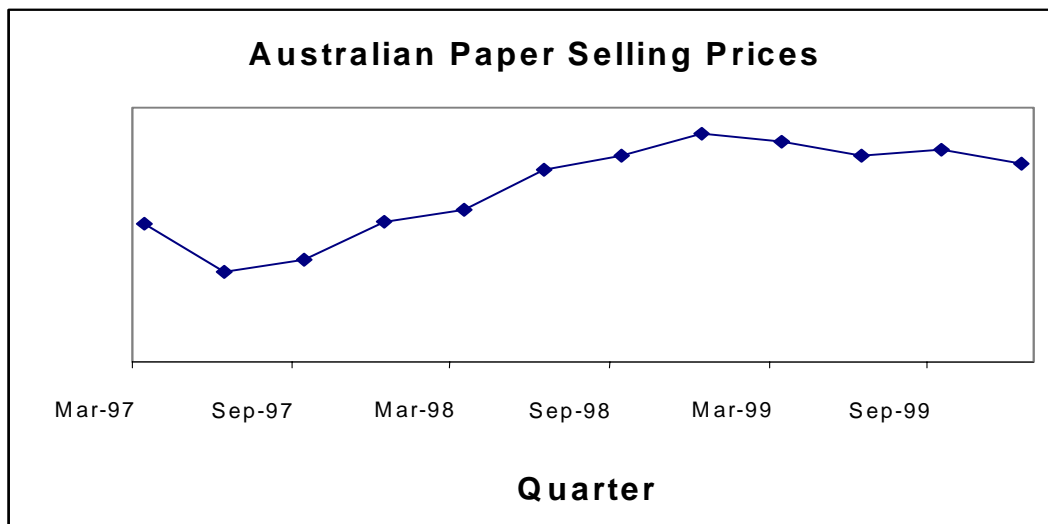
Customs is not convinced that 1995 selling prices, heavily influenced by high world pulp prices, are a reasonable expectation of what Australian Paper

could currently expect to achieve for its coated paper in the absence of dumping.

Customs then examined the current selling prices of the Australian industry. In its Report No. 185 of 1998, the ADA stated:

*'Although provisional measures have been in place against exports from some of the companies under inquiry since the end of the Customs inquiry in late November 1997, the Authority considers that it may be too early to look to prices in the local market as they may not yet be at the level that might apply in the absence of the affects of dumping.'*

It may now be reasonable to consider that sufficient time has passed, since anti-dumping measures were imposed, to allow Australian Paper to achieve selling prices unaffected by dumped imports. Customs notes that Australian Paper has achieved an increase in selling prices, since the introduction of anti-dumping measures, as shown below.



A marked increase in prices to December 1998 was followed by a slight fall over 1999 (but still at a level considerably higher than in 1997).

### **Coated paper imported at 'non-dumped' prices**

Several interested parties submitted that the prices for coated paper in the Australian market are significantly influenced by low-priced, non-dumped imports from certain countries. The submissions commonly referred to imports from Indonesia, Korea and Italy.

Coated paper exported to Australia from these countries was subject of Customs and ADA inquiries in 1997 and 1998. Customs terminated its investigation in relation to Indonesia and certain exporters from Italy because dumping margins in respect of goods exported to Australia from those sources

were less than 2 per cent, or were not dumped. The ADA subsequently confirmed the Customs decision to terminate.

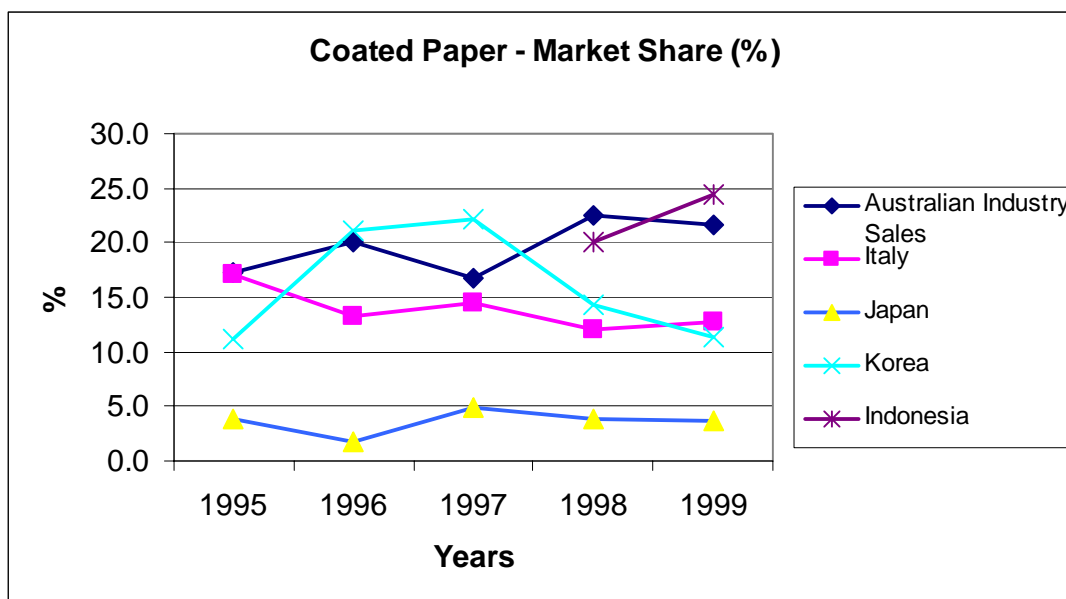
Customs made positive preliminary findings in respect of exports of coated paper from Korea and certain exporters in Italy. However, the ADA subsequently recommended that no action be taken against exports from Italy and Korea. ADA report No. 185 contains graphic depictions of the dumping margins found for exporters in Italy and Korea. Whilst significant dumping margins were evident in 1996 there was a clear trend away from dumping with very little dumping throughout the calendar year 1997.

Customs has examined the market shares of certain countries together with that for the Australian industry, and the findings are tabulated and graphed below.

#### Market Share % - Coated Paper

	1995	1996	1997	1998	1999
<b>Australian Industry Sales</b>	17.3	20.0	16.8	22.6	21.6
<b>Imports</b>					
Japan	3.8	1.7	4.9	3.9	3.7
Italy	17.1	13.3	14.5	12.1	12.7
Korea	11.2	21.1	22.1	14.3	11.3
Indonesia				20.1	24.3
<b>Imports from other sources</b>	50.7	44.0	41.9	27.0	26.3
<b>Australian Market</b>	100	100	100	100	100

Notes: The figures for 1995, 1996 and 1997 were taken from ADA Report No. 185, p. 66.  
The import figures for 1998 and 1999 were extracted from Customs database.  
The industry sales figures for 1998 and 1999 were taken from the Australian Paper submission.  
Exports of coated paper from Indonesia for 1995, 1996 and 1997 were included within the other imports category



It is clear that imports of coated paper from Indonesia, Italy and Korea hold significant market shares. Customs agrees that the prices of coated paper imported from each of these sources would have a substantial influence on prevailing market prices. Customs found no evidence that Australian Paper indexes its prices directly to any particular imported product, but considers Australian Paper must have regard to its competitors prices, particularly those which hold substantial market share.

Certain exporters in Italy and Korea have, in the past, shown a propensity to dump, at considerable dumping margins. Australian Paper had alleged that dumping from Indonesia, Italy and Korea is occurring. Since the statement of essential facts, Australian Paper has provided information in respect of certain countries to support its claim of dumping. Customs has examined this information and had regard to additional information it has gathered (from its own databases) in respect of export prices for certain countries.

Customs agrees that without an investigation, culminating in findings based on reliable and verified information, it cannot conclude these countries have been dumping. However, having regard to the information now before it, Customs considers there are reasonable grounds to assert dumping from at least one country with substantial market share may be occurring. For this reason Customs has no confidence that current selling prices in Australia, for both the Australian Paper and imported coated paper, are not affected by dumping.

Customs also had regard to the findings contained within the statement of essential facts relating to the inquiry into anti-dumping matters in respect of Austria and Finland. As dumping was found in respect of certain exports from Austria in the first half of 1999, Customs considers the market may have been affected by dumping in that time.

Customs is unable to make a confident assessment of whether the Australian market was ever in a position where it was unaffected by dumping in 1999 or 2000.

Customs considers it would be inappropriate in this case to determine the USP using the prices of coated paper imported from countries not subject to anti-dumping measures or the current selling prices of the Australian industry.

### **Australian industry's cost to make and sell plus profit**

Australian Paper claimed the ADA method does not reflect commercial reality. Australian Paper's primary concern with the ADA approach was the amount added for profit. It claimed that the long term bond rate does not reflect the expectations of investors in manufacturing industries, with its associated technical, financial and market related risks.

Australian Paper submitted that if the cost to make and sell plus profit approach to determining the USP was eventually favoured by Customs, a relevant amount for profit is one based on a rate of return reflecting the real risk and cost of capital. It provided Customs with a measure of its minimum acceptable earnings before interest and tax to funds employed ratio (EBIT/FE), which it claimed "would just allow Amcor to stand still in a static market place". Australian Paper claims this to be a measure not set by Australian Paper, or Amcor, but by the investment market. Customs does not consider this rate of return, whether demanded by the company or the investment market, is necessarily achievable in a market for coated paper that is unaffected by dumping. A non-injurious price is intended to be the minimum price necessary to remove the injury caused by dumping, not by other factors.

Customs looked to the coated paper market place for guidance on achievable profit margins. Customs notes the Australian Paper statement that "The financial year 1995-96 is the most recent time in which the market was not affected by dumping". However, as discussed earlier, at least part of this period was affected by dumping.

Customs and the ADA, in the 1997 and 1998 inquiries, regarded 1995 as the 'base year' for comparison to the period after 1 January 1996, which was alleged to be the period that injury caused by dumping commenced. Using the information supplied to Customs by Australian Paper, Customs calculated an average percentage mark-up for profit actually achieved by Australian Paper for its sales of coated paper over the 1995 calendar year. At that time, Australian Paper produced its own pulp, and world pulp prices were high. Customs therefore considers Australian Paper may have accepted low profit levels in its coated paper manufacture when these were offset by high profits in its pulp production. Customs therefore considers it may be unreasonable to rely on Australian Paper profit levels for coated paper in 1995.

Customs has also obtained information from the Australian Bureau of Statistics (ABS) in respect of manufacturing industry operations and

performance. Customs has examined the information for the overall manufacturing industry, the “Wood and paper product” subdivision and the more specific “Pulp, paper and paperboard” classification. Customs sought to ascertain a measure of profit that was reasonably indicative of what Australian Paper would have achieved for its combined pulp, paper and coated paper manufacturing operations in a market not affected by dumping.

Customs recognises the profits for 1994/1995 and 1995/1996 financial years in the “Pulp, paper and paperboard” classification were heavily influenced by high world pulp prices and the consequent high prices for paper products. Customs also recognises that dumping in later years may have influenced certain sectors within that classification. Customs notes that the paper products which have in recent years been subject of anti-dumping inquiries are only a portion the “pulp and paper” segment of the greater “pulp, paper and paperboard manufacturing” class, which is in turn a part of the “Wood and paper product” subdivision. For these reasons, Customs consider a weighted average of the profit margins for the “Wood and paper product” division, over the four financial years ending June 1998, is a reasonable measure of profit. This approach should minimise any distortion from extraordinarily high pulp and paper prices or depressed paper prices by reason of dumping.

The ABS profit figure was the operating profit before tax measured as a percentage of sales revenue. Customs converted this profit to a mark-up on costs. Customs has also taken account of the slightly higher profit margin attributed by the ABS to “large businesses” within the “Wood and paper product” division.

In its response to the statement of essential facts, Australia Paper introduced the Asian financial crisis as a factor contributing to “the abnormal depression of paper and wood products prices”. Customs analysis of the profit ratios for specific financial years for the “Wood and paper product” subdivision revealed a significant slump from the 1994-95 year to 1995-96. However, the profit levels for the following two years declined only marginally compared to 1995-96. Customs assumed any impact from the Asian financial crisis could only become evident within the last of the four years examined. The analysis did not provide any basis for concluding the Asian financial crisis had any identifiable impact on the profit levels for the “Wood and paper product” division in Australia in 1997-98.

#### **4.4.3 Price differential between grades**

Customs notes that the ADA, in calculating NIPs in 1998, determined that a price premium exists in respect of the price of A1 grade coated paper compared to A2 grade, for exports of the goods from Japan. No such premium was applied in the case of Austria and Finland. Customs is in possession of Australian merchants pricing information for A1 and A2 coated paper from certain countries and can derive a notional premium applicable to the difference in grades. However, the pricing information is not considered indicative of prices actually paid and certain assumptions on merchant net

prices, profit and selling costs would need to be made to calculate an into-store price. In these circumstances, Customs has used the price differential identified by the ADA for the difference in A1 and A2 grades from Japan for use in the calculation of NIPs for Austria and Finland.

#### 4.4.4 Non-injurious price – conclusion

Based on the evidence available, Customs is not in favour of using any of the selling price options for determining USP. Customs considers the most reasonable approach to calculation of the USP is using the Australian industry's weighted average cost to make and sell for 1999 plus an amount for profit.

Customs considers the profit achieved by Australian Paper in 1995/96 is not appropriate as it was affected by dumped imports.

Customs is not convinced that the Australian industry could currently reach selling prices that would achieve the rate of return it describes as that demanded by the investment market.

Customs is concerned that Australian Paper's actual profit margins for coated paper sales in 1995 may not take account of any profit margin attributable to the pulp production. That year was also affected by extraordinarily high pulp prices.

Customs considers the most reasonable measure of profit is one based on the profit derived from ABS industry performance information for the "Wood and paper product" division, for the period July 1994 to June 1998.

Customs notes the Australian Paper comment that "the proposed reliance on the ABS data for 1994-98 would significantly underestimate the price level at which **injury** would cease." Importantly, Customs considers it has established a reasonable USP, one that should remove the **injury caused by dumping**, not by other factors.

Customs calculation of the USP forms confidential appendix 5.

To calculate the NIP, Customs has deducted from the USP an average of all of the post export charges, applicable to exports of coated paper from Finland. As the Australian industry sell primarily to merchants, which also import coated paper, Customs considers appropriate point for price comparison is "free-into-store" at the merchants' premises. It is therefore not appropriate to deduct an amount for importers' profits from the USP in calculating the NIP. Customs considers it is also appropriate to make adjustments to take account of the price differentials between grades A1 and A2.

Customs calculation of NIPs forms confidential appendix 6.

Australian Paper requested that Customs comment on “the comparison between the rate of profit finally selected and the profit achieved in 1995/96 when prices were affected by dumping”. Using the ABS data, Customs has determined an amount for profit measured as a mark-up on costs. This is significantly higher than the profit achieved by Australian Paper in its coated paper sales for 1995-96.

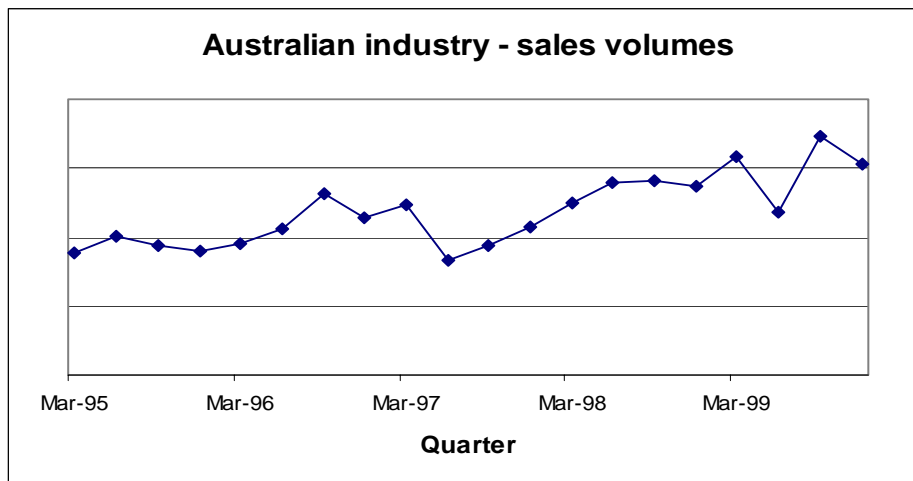
## 5. The economic condition of the industry

### 5.1 Volume trends

Customs has analysed the total Australian market (in volume terms) for coated paper using the sales by the Australian industry and import data from Customs commercial database.

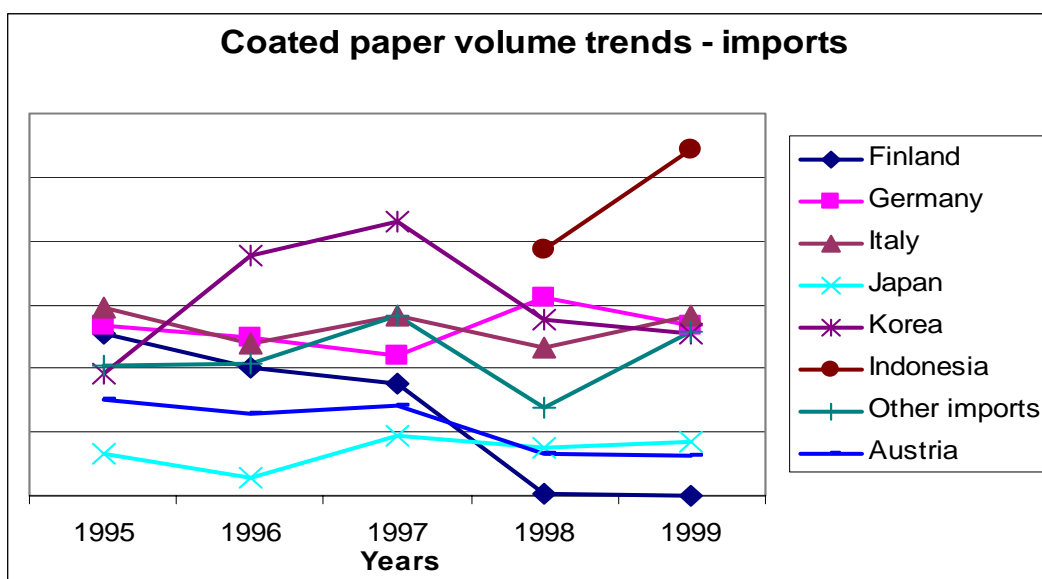
An earlier table and graph provides detail, and an illustration, of market share trends since 1995.

Customs notes the increased sales volumes for Australian Paper as illustrated in the following graph:



In relation to import volumes, the following graph demonstrates the emergence of Indonesia as a significant supplier into the Australian market. Indonesian imports prior to 1998 were included in the 'Other imports' category.

There have been notable changes in the volume trends for coated paper imported from Austria and Finland, i.e. volume has declined significantly from both these sources. One reason for the decline in respect of Austria is the withdrawal from the market by an Austrian exporter other than Sappi Gratkorn. The decline for Finland reflects the cessation of exports by Metsa-Serla (and Forest Alliance).



Notes: The figures for 1995, 1996 and 1997 were taken from ADA Report No. 185, p. 66.  
The import figures for 1998 and 1999 were extracted from Customs database.

### 5.1.1 Market Shares

Market share analysis is included within the Customs considerations of NIP, which is detailed above.

## 5.2 Price Trends

### 5.2.1 Price undercutting

Customs is not in possession of sufficient data to calculate landed, into-store costs for all exports of the Sappi Gratkorn product. However, Customs has used the weighted average of the costs applicable to 1999 shipments selected for verification and compared that to the weighted average of the Australian industry selling price for 1999. This analysis does not indicate the prices of Sappi Gratkorn coated paper were undercutting the Australian Paper prices.

The into-store costs of the small volume of exports from Forest Alliance were at a level that, when compared with the 1999 weighted average Australian Paper selling price, does not indicate that the Forest Alliance prices were undercutting the Australian Paper selling prices.

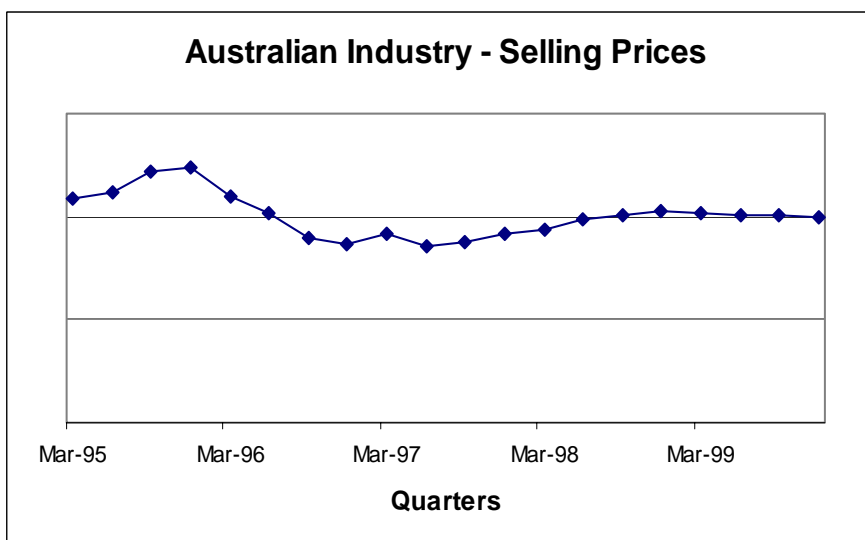
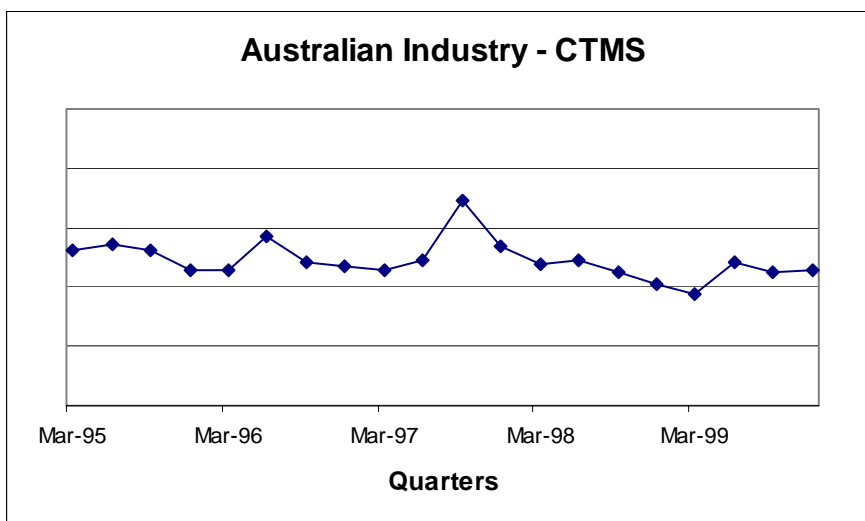
### 5.2.2 Price depression

The Australian industry selling prices are depicted in a graph within the NIP section above. The graph clearly identifies an upward trend since the time

that anti-dumping measures were imposed until 1999 at which time it appeared to fall slightly. Provisional measures were imposed in November 1997 in respect of goods from a number of exporters in various countries, including Sappi Gratkorn of Austria and Metsa-Serla of Finland.

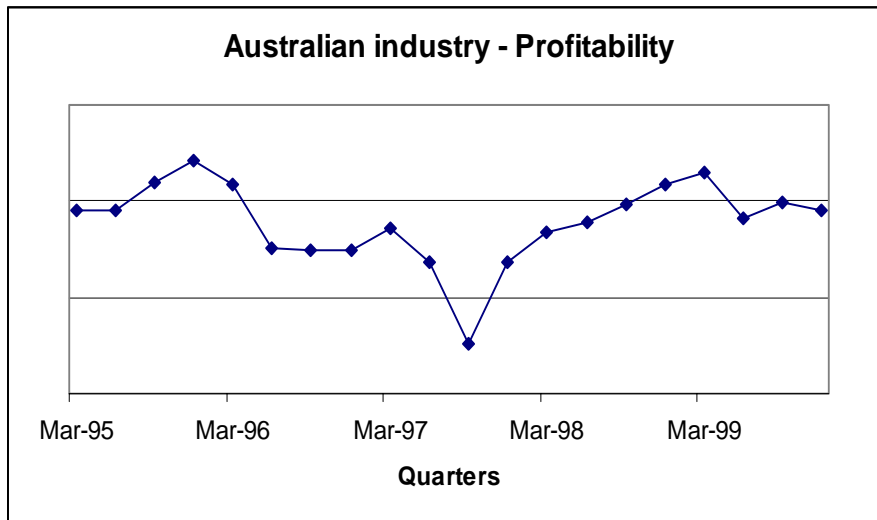
### 5.2.3 Price suppression

The following charts show Australian Paper's CTMS and its selling prices for coated paper since 1995. The graphs indicate that from the September 1997 quarter until early 1999, costs fell as selling prices climbed. Then selling prices fell slightly through to and including the December 1999 quarter. Costs have fluctuated since the March 1999 quarter but appear to have commenced an upward trend.



### 5.3 Profit and Profitability

Australian Paper's profits climbed sharply from the last quarter of 1997 until early 1999. Its profits have since trended downwards. The same trend is evident in a measure of profitability (profit expressed as a percentage of sales revenue). The trend is depicted in the graph below.



## **6. Threat of dumping causing material injury**

The threat of dumping causing material injury to the Australian industry is not a relevant consideration for the inquiry in respect of Finland.

Customs found the volume of exports from Austria fell significantly after the imposition of anti-dumping measures in late 1997. The only exporter of coated paper (subject to anti-dumping measures) from Austria since the beginning of 1999 has been Sappi Gratkorn. This inquiry affects no exporters in Austria other than Sappi Gratkorn and Customs has no reason to conclude any emergence of exports from other Austrian sources is imminent. Accordingly, the Customs focus in assessment of volume of dumped exports from Austria is centred upon Sappi Gratkorn.

Customs notes that whilst there has been considerable quarterly fluctuations, the volume of coated paper exported to Australia by Sappi Gratkorn has maintained a relatively stable, but slightly upwards trend since the end of 1996. This trend has emerged in a growing market.

The growth of Sappi Gratkorn's export volumes over 1998 and 1999 coincided with what Customs found to be a trend away from dumping by Sappi Gratkorn. The majority of Sappi Gratkorn export shipments in the latter half of 1999 were at export prices above the level of the corresponding normal value. Customs has found recent Sappi Gratkorn export prices have increased and there is information to suggest further increases are likely.

Customs found the volume of coated paper Sappi Gratkorn exported to Australia at dumped prices, when measured as a percentage of the total Australian import volume, for the period 1 January 1998 to 31 October 1999, was approximately 2.1%.

Customs notes that, for the period January 1998 to late October 1999, Sappi Gratkorn's export prices may have been influenced by anti-dumping measures.

Having regard to the available evidence Customs is unable to conclude there is an imminent and foreseeable threat of substantially increased dumped exports from Austria and consequential material injury to the Australian industry.

## 7. Conclusions

### 7.1 Sappi Gratkorn of Austria

Customs has examined whether the volume of dumped exports from Austria is negligible in terms of s. 269TDA(4) of the Act. A negligible volume of dumped goods is where the total volume of dumped goods exported to Australia over a reasonable examination period from a particular country, when measured as a percentage of the total Australian import volume, is less than 3 per cent. A reasonable examination period is defined at s. 269TDA(17) of the Act as either "the whole or a substantial part of the investigation period".

Over the period 1 January 1998 to 31 October 1999, Customs found the volume of coated paper exported by Sappi Gratkorn to Australia at dumped prices, when measured as a percentage of the total Australian import volume, was approximately 2.1 per cent. For the period 1 January 1999 to 31 October 1999, a period in which Sappi Gratkorn was the only Austrian exporter to Australia of goods subject to anti-dumping measures, Customs found this to be approximately 1.4 per cent.

Customs found the actual volume of dumped exports from Austria, over a reasonable examination period, did not exceed 3 per cent of the total Australian imports. Customs also concluded the potential volume of dumped exports from Austria is not imminently expected to exceed 3 per cent of the total Australian imports.

Accordingly, Customs concluded the inquiry should be terminated in respect of Sappi Gratkorn, in accordance with s. 269TDA(3) of the Act.

In its response to the statement of essential facts, Australian Paper stated:

*"In essence, since the inquiry was initiated by the Minister pursuant to s. 269TAG of the Act, rather than by an applicant under s. 269TB, the de-minimus provisions reflected in s. 269TDA do not apply, and the Minister is, instead, guided by Article 5 of the GATT which allows for considerably more flexibility in determining the de-minimus volume. Any decision to terminate rests with the Minister rather than the Chief Executive Officer of Customs."*

Whilst this has been an inquiry in terms of s. 269TAG of the Act, the Minister directed that the conduct of the inquiry be in accordance with the provisions of Part XVB of the Act and be consistent with Australia's obligation under the World Trade Organization Agreement. Therefore, Customs considers it is appropriate to observe the general provisions to terminate as set out in s. 269TDA of the Act. In this case, Customs has found negligible volumes of dumped imports. In accordance with s. 269TDA(3) of the Act, Customs recommended the inquiry in respect of Sappi Gratkorn be terminated.

## 7.2 Metsa-Serla and Forest Alliance of Finland

Having regard to the available evidence, Customs found:

- normal values should remain unaltered from the previously established levels;
- the NIP for A2 grade should change from the previously established level; and
- the NIP for A1 grade should be changed from the previously established level, and incorporate an amount of the price differential between A1 and A2 grades.

This has the effect of increasing the operative measure applicable to A1 grade and decreasing the operative measure applicable to A2 grade coated paper exported to Australia. The operative measure is the lower of the normal value or NIP, i.e. the level at which ascertained export prices need to be set to remove material injury to the Australian industry that is due to dumping.

## 8. RECOMMENDATIONS

### 8.1 Sappi Gratkorn of Austria

Customs has recommended that the Minister **determine**:

- certain export prices in accordance with s. 269TAB(1)(c) of the Act (included at confidential appendix 2), noting that export prices established in accordance with s. 269TAB(1)(a) of the Act need not be determined by the Minister;
- normal values in accordance with s. 269TAC(6) of the Act (listed at confidential appendix 3)
- dumping margins in accordance with s. 269TACB(1) of the Act (listed at confidential appendix 4)

and refer the matter back to the CEO of Customs for termination in accordance with s. 269TDA(3) of the Act.

### 8.2 Metsa-Serla and Forest Alliance of Finland

Customs recommends that the Minister:

- sign a notice pursuant to s. 269ZDB(1) of the Act, declaring that, with effect from a date specified in the declaration, the terms of the Metsa-Serla undertaking are altered in accordance with the undertakings now offered by Metsa-Serla and Forest Alliance, and the undertaking as so varied is acceptable to the Minister.

## 9. EVIDENCE RELIED UPON BY CUSTOMS

Section 269ZDA(5) requires that the report set out the material findings of fact on which the recommendations are based and also provide “particulars of the evidence relied upon to support those findings”.

In formulating the recommendations in this report, Customs had regard to:

FINDINGS	SECTION OF REPORT DETAILING FACTS RELIED UPON	EVIDENCE RELIED UPON
Australian industry and market	3	Industry submission; information gathered and verified during industry visit; Customs database; previous Customs & ADA reports
Export prices	4.1	Exporter submissions; information gathered and verified during exporter and importer visits; Customs database; previous Customs & ADA reports
Normal values	4.2	Exporter and manufacturer submissions and information gathered and verified during manufacturer and exporter visits; previous Customs & ADA reports
Non-injurious prices	4.4	Industry and exporter submissions; information gathered and verified during industry, exporter and importer visits; ABS statistics; Customs database; previous Customs and ADA reports
Economic condition of the industry	5	Industry submission; information gathered and verified during industry visit; Customs database; previous Customs & ADA reports
Threat of dumping causing material injury	6	Exporter submissions; information gathered and verified during exporter and importer visits; Customs database; previous Customs & ADA reports

## 10. GLOSSARY

### Arms Length

Section 269TAA of the Customs Act sets out the circumstances where a transaction is to be treated as non arms-length.

A transaction cannot be considered to be arms-length if:

- there is a consideration other than price; or
- the price is influenced by a relationship between the importer and exporter; or
- the buyer will be reimbursed, compensated or receive a benefit in respect of the price (unless it is an established, normal business practice to do so).

Export sales may also be determined as not at arms length if the importer is selling at a loss.

### Ascertained amounts

Where a decision is taken to impose anti-dumping measures, it is necessary to ascertain what is or would be the normal value, export price and non-injurious price of the goods. The details of these ascertained amounts must be published in the formal notice of the Minister's decision, unless the release of such details contains information regarded by an interested party as confidential. These ascertained amounts might be amended as a result of a review.

The ascertained prices should not be confused with the actual prices.

### Dumping

Dumping occurs when goods are exported to Australia at a price that is below the "normal value" of the goods. Normal value is usually the domestic price of the goods in the country of export.

Australia's anti-dumping and countervailing legislation is found in Part XVB of the *Customs Act 1901* and *Customs Tariff (Anti-Dumping) Act 1975*. The legislation reflects Australia's rights and obligations as a signatory to the WTO Anti-Dumping Agreement and Agreement on Subsidies and Countervailing Measures and with the Government's industry and economic policies.

Australia's legislation does not seek to establish whether dumping was or is predatory, and in some sense unfair. Rather, the objective is simply to identify

the price differentiation if it exists, any material injury caused thereby, and to provide a mechanism to remove the injurious effect of subsequent imports.

### **Dumping Duty Act**

Working title of the *Customs Tariff (Anti Dumping) Duty Act 1975*.

### **Dumping Margin**

The dumping margin is the difference between the export price and the normal value. Dumping margins are usually calculated for each individual exporter and can be expressed as a value or as a percentage of the export price.

Dumping margins can be determined using different methodologies depending on the circumstances of the investigation. Under s. 269TACB of the Customs Act export prices are compared with normal values to arrive at dumping margins as follows:

- the weighted average export price over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period; or
- using the above method in respect of parts of the investigation period as if each of these parts were the whole of the investigation period; or
- the export price in respect of individual transactions over the whole of the investigation period with the corresponding normal values determined over the whole of that period; or
- a combination of methods referred to above in respect of part or parts of the investigation

If the number of exporters who have provided a submission is so large that it is impractical to calculate individual dumping margins for each of the exporters, statistical sampling may be used to calculate dumping margins for those exporters with the largest volume of exports to Australia. The dumping margins established under this approach might then be used for the remaining exporters and applied as residual margins for that country.

### **Export Price**

Export prices are determined under s. 269TAB of the *Customs Act*.

Usually the export price is determined under s. 269TAB(1)(a) of the Act using the actual price paid by the Australian importer, less post exportation charges, where:

- the importer is not the exporter;

- the transaction is arms length: and
- the goods have been purchased by the importer from the exporter.

When the sales are considered not to be arms-length, s. 269TAB(1)(b) and the related s. 269TAB(2) provide a method to determine the export price on the basis of the selling price by the importer, less prescribed deductions, provided:

- the subsequent sale in Australia by the importer was to a non-associated person; and
- the goods have been sold in the condition in which they were imported.

Prescribed deductions include any duties or sales tax paid or payable on the goods and all other costs or charges incurred after exportation and profit.

When the conditions of s. 269TAB(1)(a) and (1)(b) cannot be met, s. 269TAB(1)(c) permits the export price to be determined having regard to all the circumstances of the exportation.

When sufficient information has not been furnished, or is not available, to enable the export price to be determined under the preceding provisions, the export price is determined having regard to all relevant information under s. 269TAB(3) of the Act.

### **Imposition of Measures**

Australia's dumping legislation is contained in the Dumping Duty Act and Part XVB of the Customs Act. Dumping arises when the exported goods are priced lower than their 'normal value' in the country of export.

Where it is established that dumped imports have caused, or threaten to cause, material injury to the Australian industry producing like goods, the Minister may sign a notice declaring that a dumping duty is to apply. A notice under s. 269TG(1) applies if past exports of the goods have caused injury; a notice under s. 269TG(2) applies if the injurious dumping is likely to continue. Another notice signed by the Minister under s. 8(5) of the Dumping Duty Act imposes the amount of the duty.

The maximum amount of interim dumping duty that may apply is equal to the difference between the normal value and the export price. A lesser amount of dumping duty applies if that lesser amount suffices to remove the injury caused by the dumping. A NIP is calculated for this purpose.

Measures can take the form of dumping or countervailing duty (pre 1/1/93 measures), interim dumping or countervailing duty (post 1/1/93 measures) or an undertaking by the exporter (or in countervailing cases by the exporter or the government of the exporting country). In accordance with s. 269TM,

dumping and countervailing duties and undertakings remain in force for a maximum of five years, unless revoked earlier.

### **Interim Dumping/Countervailing Duty**

Under the interim duty scheme, introduced on 1 January 1993, an amount of dumping/countervailing duty is collected on every importation of the goods. That duty is known as interim dumping/countervailing duty. Interim duty does not apply to goods that became subject to final anti-dumping and countervailing measures before 1 January 1993.

Interim duty (in the case of final measures) is the sum of:

- the difference between the ascertained normal value (or the ascertained non-injurious price if that is lower) and the ascertained export price of the goods;

plus:

- the amount by which the actual export price is less than the ascertained export price.

The interim duty may be levied on an ad valorem basis, ie x% of the export price, as a price per unit of quantity (eg. \$y per tonne) or as a combination of both.

### **Like Goods**

Section 269T(1) of the Act defines 'like goods' as:

*“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.”*

### **Material Injury**

The minister may impose measures to relieve the affect of dumping up to the level of the dumping margin, when it has been proven that dumping has caused or is threatening to cause material injury to the Australian industry. Section 269TAE of the *Customs Act* lists factors that may be regarded in determining whether the Australian industry has suffered material injury caused by dumping and subsidisation.

The factors include:

- the size of the dumping margin/s in respect of the goods exported to Australia and/or particulars of any countervailable subsidy received in respect of goods exported to Australia;

- the quantity of goods under consideration exported to, and consumed in Australia during a particular period and the consequential effect on the quantity of like goods produced or manufactured in Australia by the Australian industry and sold or consumed in Australia;
- the export price of the goods under consideration and the price paid for the goods sold in Australia and the consequential effect on the price paid for like goods produced or manufactured by the Australian industry and sold in Australia; and
- the effect that the exportation of goods under consideration to Australia in those circumstances has on the relevant economic factors in relation to the Australian industry.

### **Non-Injurious Price (NIP)**

Dumping duties may be applied where it is established that dumped imports have caused or threaten to cause injury to the Australian industry producing like goods. The level of dumping duty cannot exceed the margin of dumping, but lesser duty may be applied if it is determined that it is sufficient to remove the injury. A non-injurious price (NIP) is calculated for this purpose. The NIP provides the mechanism whereby this lesser duty provision is given effect - the FOB price that would be sufficient to remove the injury caused to the Australian industry by the dumping.

Customs generally derives the NIP by first establishing a price at which the local industry might reasonably sell its product in the absence of the price effects of dumped/subsidised imports. This price is known as the unsuppressed selling price (USP). All post exportation costs, and where appropriate an amount for importers profit, are deducted from the USP until a notional selling price at an FOB level is derived.

The USP may be obtained by various methods depending on the circumstances of the case. Examples of the bases for the calculation of USP are:

- the price for locally produced goods when the Australian market was not effected by dumping;
- the Australian industry's cost to make and sell plus an estimated profit (if any) which the industry could achieve in a market not affected by dumping;
- the selling price of undumped imports in the Australian market.

### **Normal Value**

In most circumstances the normal value of goods is the price paid for the goods in the domestic market of the country of export. Usually, prices are based on sales by the exporter, but they may also be based on sales by other

sellers on the domestic market in the country of export. The sales must be 'arms length' and be in the 'ordinary course of trade'. The relevant provision is s. 269TAC(1).

Where there are no relevant or suitable domestic sales, s. 269TAC of the Act provides alternative methods to establish normal values. The method selected is determined by the circumstances of each case.

Paragraph 269TAC(2)(c) provides for the normal value to be constructed from the cost to make and sell the exported goods. This method combines the production costs of the goods with the delivery charges and any other costs incurred as if the goods had been sold on the domestic market. Profit may be included if sales in the domestic market are profitable.

Alternatively, s 269TAC(2)(d) provides for the normal value to be based on export prices to an appropriate country other than Australia (known as third country sales). Acceptance of these sales is conditional on such sales being representative, at arms length and in the ordinary course of trade.

Section 269TAC(4) of the Act provides a number of methods for determining normal values where the Government of the country of export has a monopoly, or substantial monopoly of the trade of the country, and determines or substantially influences the domestic price of goods in that country.

Finally, a normal value may be established under s. 269TAC(6), which provides for the use of relevant available information.

Differences may affect the comparison of a normal value to the export price. To enable a fair comparison between the export price to Australia and the normal value, s. 269TAC(8) and (9) provide for adjustments (or 'due allowances').

### **Ordinary Course of Trade**

Section 269TAAD of the Act defines sales that are not in the ordinary course of trade. Where Customs is satisfied that the price paid for like goods is less than the cost to make and sell, in arms length transactions, then the sales are taken not to have been made in the ordinary course of trade if these sales:

- have been for an extended period of time - usually considered to be a 12 month period but not less than 6 months;
- are in respect of a substantial quantity of the goods - 20% or more of the volume sold on the exporters domestic market or for exportation to a third country; and
- those costs are unlikely to be recovered within a reasonable period of time.

### **Preliminary Finding**

Before legislative changes in 1998, both Customs and the former Anti-Dumping Authority investigated an application for a dumping and/countervailing duty notice. Customs conducted the first part of the investigation and made either a positive or negative preliminary finding. In the case of a positive finding, the ADA then continued the investigation and made a recommendation to the Minister in relation to the measures to be imposed.

### **Public File**

A file maintained by Customs, in accordance with s. 269ZI of Act, containing non-confidential information pertaining to anti-dumping and countervailing investigations. The file is held on the fifth floor, Customs House, 5 Constitution Avenue, Canberra City. It is available for viewing and copying by all interested parties by contacting Trade Measures office management staff on (02) 6275 6057.

### **Statement of Essential Facts**

A statement placed on the public record at or before day 110 in the review setting out the facts on which the CEO will base the recommendation to the Minister. Interested parties are invited to lodge submissions in response to the statement.

### **Variable Factor**

Section 269T(4E) define “variable factors”. The relevant factors are the normal value, export price and non-injurious price in the case of dumping duty notices. In the case of countervailing duty notices, the factors refer to the amount of countervailable subsidy and the non-injurious price.

If the goods are subject to an undertaking under s. 269TG, the factors are the normal value and the non-injurious price. Under s. 269TJ the factors are the amount of the countervailable subsidy and the non-injurious price.

## **11. LIST OF APPENDICES**

- 1 Australian Customs Dumping Notice No. 99/046
- 2\* Sappi Gratkorn export price calculations
- 3\* Sappi Gratkorn normal value calculations
- 4\* Sappi Gratkorn dumping margin calculations
- 5\* USP calculations
- 6\* NIP calculations

\*Confidential appendix – not included in the report available to the public