

CUSTOMS ACT 1901 - PART XVB

TRADE MEASURES REPORT NO.27

APPLICATION FOR DUMPING DUTIES

Continuous computer paper
exported from
Indonesia

8 September 2000

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ABBREVIATIONS

AAP (Aust)	Asia Pulp & Paper (Australia) Pty Ltd
AAPIT	Asia Pulp & Paper International Trading Ltd
ACDN	Australian Customs Dumping Notice
CCP	continuous computer paper
CEO	Chief Executive Officer of Customs
CFR	cost and freight
CIF	cost, insurance and freight
CTMS	cost to make and sell
Customs	Australian Customs Service
FOB	free on board
minister	minister responsible for Customs
MCC	Moore Corporation Canada
MKP	PT Mega Kertas Pratama
Moores	Moore Business Systems Australia Limited (the applicant)
N/A	not applicable
NIP	non-injurious price
s.	section, sub-section or paragraph
SEF	statement of essential facts
The Act	<i>Customs Act 1901</i>
The goods	the goods the subject of the application
Tjiwi Kimia	PT Pabrik Kertas Tjiwi Kimia Tbk
TRACE	Customs' commercial database
USP	unsuppressed selling price
WTO	World Trade Organisation

Terms that are italicised in the report are defined in the glossary, which is at attachment 1.

1 SUMMARY

1.1 Background

This report explains the results of an *investigation* by Customs into the alleged *dumping* of certain types of continuous computing paper (CCP) exported to Australia from Indonesia.

The anti-dumping investigation is the result of an application by Moore Business Systems Australia Limited (Moores) which produces most of the CCP manufactured in Australia. Moores produces CCP, together with other products, at its Wodonga industrial site. CCP accounts for about 10 per cent of Moores' total revenue. Moores employs about 300 people in Wodonga, of which a significant number are engaged in the production of CCP.

The exporter in Indonesia is PT Pabrik Kertas Tjiwi Kimia Tbk.

Customs initiated the investigation on 6 April 2000.

A *statement of essential facts* was placed on the public file on 25 July 2000.

1.2 Australian market

CCP is used primarily for the purpose of printing from computers using dot matrix printers with tractor feed mechanisms.

The Australian market for the types of CCP under investigation is currently around 16,000 tonnes, having declined from around 24,000 tonnes (Moores' estimate) in 1995. The declining market trend is likely to continue as technological developments encourage a consumer shift towards other printing mediums such as laser printers using cut-size paper.

The market is supplied by Moores (the major Australian producer), other Australian producers and imports from Indonesia.

1.3 Material injury

Customs found that Moores, in 1999 (compared to 1998), suffered:

- lost sales and market share;
- price depression;
- loss of capacity utilisation; and
- operating losses and negative profitability

in its CCP business.

Customs is satisfied that Moores' CCP operation has suffered *material injury* due to some cause or causes.

1.4 Dumping

Customs determined *normal values* under s. 269TAC(1) of the Act using domestic selling prices of CCP in Indonesia. It determined *export prices* under s. 269TAB(1)(c) using the FOB price paid or payable by the importer.

Customs found that the *dumping margins* were negative.

1.5 Causal link

As stated in section 1.4, Customs did not find dumping margins. Therefore dumping could not have caused the material injury suffered by Moores.

1.6 Continuation of material injury

Customs is not satisfied that future exports are likely to be dumped to the extent of causing material injury to Moores in the near future, as there is no evidence that the situation in respect of exports of Indonesian CCP is likely to change substantially.

1.7 Conclusion

Customs is satisfied that although Moores suffered material injury in its CCP business, the injury was not caused by dumping of CCP from Indonesia.

Further, Customs is not satisfied that future exports from Indonesia are likely to be dumped.

Customs therefore recommends that the minister not take anti-dumping action against exports of CCP from Indonesia.

Details of Customs recommendations are at chapter 9.

A glossary is at attachment 1.

A list of legal instruments for the minister's signature is at attachment 2.

The evidence relied upon by Customs is at attachment 3.

A summary of essential facts is at confidential attachment 5.

2 PURPOSE, PROCEDURES AND BACKGROUND

2.1 Purpose of investigation

Part XVB of the *Customs Act 1901*, and the *Customs Tariff Anti-Dumping Act 1975*, protect Australian industries from dumping and from exported goods which have benefited from certain kinds of government assistance.

Anti-dumping and countervailing measures are imposed where dumping or subsidisation has caused, or threatens to cause, material injury to an *Australian industry* producing *like goods*. Anti-dumping measures may take the form of dumping duties or undertakings.

(The glossary to this report contains more information about the legislation.)

2.2 Procedures

If Customs accepts an application, s. 269TEA of the Act requires that it conducts an investigation and reports to the minister within 155 days. The report must recommend whether dumping and countervailing duty *notices* should be published; and the level of duty payable.

The report also recommends whether measures should be imposed on any like goods not covered by the application and imported between the start of the investigation and ending 20 days after the statement of essential facts was placed on the public record.

The recommendation to the minister is based on:

- the application;
- submissions to which the CEO had regard when formulating the statement of essential facts;
- the statement of essential facts;
- any submission made in response to that statement that was received within 20 days of the statement being placed on the public record by Customs; and
- any other relevant matter.

Customs is not obliged to consider submissions in response to the statement of essential facts which are received more than 20 days after the statement was placed on the public record.

Customs must clearly state the material findings of fact on which any recommendation in this report is based and provide particulars of the evidence relied on to support those findings.

In compiling the report and recommendations, Customs examines submissions and undertakes on-site verifications in Australia and overseas where necessary. Interested

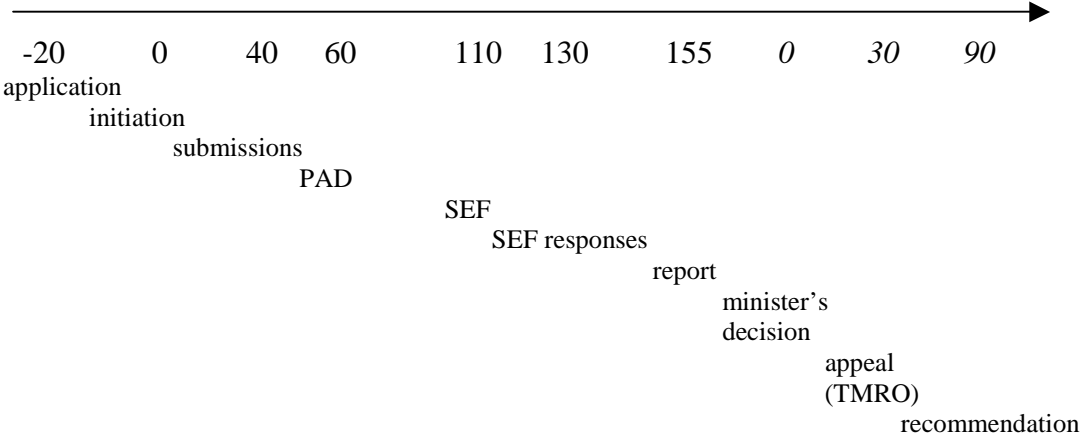
parties participate in the investigation process by lodging submissions at various stages.

On the basis of this report the minister will make a decision on whether measures should be imposed. If measures are imposed, Customs is responsible for the administrative arrangements.

Interested parties have 30 days after the publication of the minister’s decision in which to ask the *Trade Measures Review Officer* to review the decision. The contact address of the officer is:

Trade Measures Review Officer
Robert Garran Offices
National Circuit
BARTON ACT 2601
Phone: +61-2-6250 6220
Fax: +61-2-6250 5914.

A time-line (days) summarising the investigation process is shown below.



Apart from a *preliminary affirmative determination* (PAD — note that a PAD was not made in this case), where day 60 is the earliest possible day for publishing, all other days are the statutory deadlines. The italicised days in the summary are after Customs report has been presented to the minister.

2.3 Customs approach to the investigation

The key issue before Customs is whether dumping is causing or threatening material injury to the Australian industry producing like goods.

If the answer is ‘no’, Customs cannot lawfully recommend anti-dumping action. If the answer is ‘yes’, Customs will normally recommend action.

Customs considers four subsidiary questions in deciding whether to recommend that the minister take anti-dumping action.

- (i) Have the goods in question been dumped?

If the goods have not been exported at dumped prices, then dumping cannot be causing or threatening material injury.

(ii) What has been the recent economic performance of the industry?

Dumping cannot be causing injury if the Australian industry in question shows no signs of being injured. Customs examines the economic condition of the industry to identify any signs that the industry has been injured.

(iii) Has dumping caused material injury?

Customs evaluates the industry's performance to identify any other sources that may have caused injury to the industry. To recommend anti-dumping measures Customs must be satisfied that the dumping, of itself, has caused material injury to the industry.

(iv) Is there a continuing threat of material injury by future dumping?

In some (rare) cases dumping may have indeed caused, but clearly no longer threatens to cause, (continuing) material injury: in such cases anti-dumping action would not be warranted. On the other hand, dumping may not as yet have caused material injury but may threaten to cause material injury in the future. In such cases Customs recommends action.

If Customs decides that it can lawfully recommend anti-dumping action, it then considers what form (e.g. dumping duties, undertaking) that action should take.

2.4 Background to the investigation

On 1 March 2000 Customs received an application from Moores for anti-dumping measures to be imposed on imports of CCP from Indonesia.

The application alleged that injury was being caused to the Australian industry from:

- Price undercutting, reflected in:
 - lost sales and market share
 - price suppression/depression
 - reduced equipment utilisation
 - loss of profits
 - reduced cash flow
- Reduced profitability and cash flow, resulting in:
 - reduced return on investment
 - impaired ability to raise necessary capital
 - workforce reductions

Based on the prima facie evidence presented by Moores Customs initiated an investigation on 6 April 2000.

The period of investigation for the purposes of determining the dumping margins was 1 January 1999 to 31 December 1999.

The period of investigation for the purposes of determining injury was 1 January 1998 to 31 December 1999.

2.5 Public notifications

2.5.1 Initiation

Customs announced initiation of the investigation by notice published in the *Australian Financial Review* on 6 April 2000 and by ACDN No. 2000/20. A copy of the notice is at attachment 4.

2.5.2 Statement of essential facts

Under the provisions of s. 269TDAA of the Act, on 25 July 2000 Customs placed on the public file a statement of essential facts on which it proposed to base its recommendations to the minister in relation to the investigation.

2.5.3 Public file

A public file in relation to this investigation is held by the Trade Measures Branch office management at Customs House, 5 Constitution Avenue, Canberra, 2601.

The file includes copies of the:

- non-confidential application from Moores;
- non-confidential version of each submission received during the investigation;
- non-confidential versions of Customs reports on its visits to Moores, the exporter and the importer; and
- statement of essential facts.

The file is available for viewing and copying by all interested parties by contacting office management staff on (02) 6275 6057.

2.5.4 Internet

Customs dumping notices, the SEF and this report are available on Customs Internet homepage at <http://www.customs.gov.au/notices/index.htm>.

3 THE GOODS UNDER CONSIDERATION

The application described the goods under consideration as:

Continuous computer paper (also known as listing forms or CPO), single part, printed and un-printed, punched (and in some cases also perforated) on the vertical edges to facilitate tractor feeding, perforated on the horizontal edges in approximate sizes – depth and width – 11"x15" (279mm x 381mm), 11"x9½" (279mm x 241mm), A4 (297mm x 241mm). (Actual dimensions may be ±½" or ±13mm from the nominal). All of the above in 60 or 70 gsm imported directly or indirectly from Indonesia. Continuous computer paper which may be imported in reels is not included.

3.1 Product information and uses

3.1.1 Use

CCP is used primarily for the purpose of printing from computers using dot matrix printers. Users include businesses, and financial and educational institutions.

3.1.2 Raw materials and the manufacturing process

The main raw material used to produce CCP is blank paper. This is obtained in bulk on reels from a paper manufacturer. The paper is fed into a machine (press) that converts the raw material into CCP by:

- printing (lines, shading, numbers, etc);
- punching;
- perforating (cross and vertical, as required);
- slitting to size; and
- packaging.

The raw material for CCP is (bulk) paper and the major raw material for paper is pulp. Therefore the cost of CCP is strongly influenced by the cost of pulp used.

3.2 Tariff classification

The goods are classified as follows:

TARIFF ITEM	STATISTICAL CODES	RATE OF DUTY
4802.52.00	70 or 78	5%
4808.90.10	45 or 46	5%
4823.51.00	02 or 35	5%
4823.59.00	26 or 27	5%

Customs notes that these classifications may include other papers besides CCP.

4 LIKE GOODS AND THE AUSTRALIAN INDUSTRY

4.1 Like goods

In its application, Moores claimed that:

- there is a domestic industry producing like goods to the goods under consideration;
- locally produced CCPs have characteristics that are identical in all significant respects to the imported goods;
- locally produced goods are used for the same applications as the imported goods and are substitutable and compete directly with them; and
- there are no significant quality differences between the like goods and goods under consideration.

Moores' description of the like goods follows.

...continuous computer paper, single part, printed and unprinted, punched (and in some cases also perforated) on the vertical edges to facilitate tractor feeding, perforated on the horizontal edges in approximate sizes – depth and width – 11"x15" (279mm x 381mm), 11"x9½" (279mm x 241mm), A4 (297mm x 241mm). (Actual dimensions may be $\pm \frac{1}{2}$ " or ± 13 mm from the nominal). All in nominal weights of 60 or 70gsm.

During its investigation, Customs visited both Moores and the Indonesian exporter, PT Pabrik Kertas Tjiwi Kimia Tbk (Tjiwi Kimia) and inspected samples of the goods under consideration and the claimed like goods. As a result of its inquiries, Customs found the following.

- The goods under consideration and the like goods are similar in appearance and are sold in similar manner (mostly boxes of 2000 sheets).
- Descriptions of characteristics of the respective goods by the manufacturers are similar.
- The goods under consideration and like goods are used for similar purposes in the market place, i.e. in dot matrix computer printers with tractor feed mechanisms.
- Users claim that the quality of the Australian produced goods and the imported goods are similar and they are willing to switch between them.
- The goods under consideration and the like goods are produced using the same raw materials and similar production methods.

Apart from the goods described above, Moores produces other types of CCP. About 10 per cent of its single part paper production are of types that are not identified above as like goods. Moores produces 2, 3 and 4 part papers in addition to its single part range.

4.1.1 Conclusion

Considering all of the above factors, Customs is satisfied that the relevant CCP products identified by Moores and manufactured in Australia have characteristics that are identical or closely resemble CCP exported to Australia from Indonesia.

Therefore, Customs is satisfied that the goods produced by Moores are like goods to the goods under consideration.

4.2 The Australian industry

4.2.1 The industry

In its application, Moores claimed to produce most of the CCP manufactured in Australia.

Moores identified six other Australian producers of CCP:

- Shop-a-docket (trading as AT Stacey)
- West End Press Aust. Pty Ltd
- Braddon Printing (Garrens)
- Sands Printing (formerly Fairplay)
- Ezyform Sales Aust. Pty Ltd
- Norcross Pty Ltd.

Investigations of the Australian industry by Customs indicated that West End Press Aust. Pty Ltd no longer produced CCP and confirmed that other nominated companies produced CCP.

These other manufacturers did not participate in this investigation, although most wrote to Customs supporting the application.

4.2.2 Moores' structure and manufacturing

Until 31 December 1998 Moores was a fully owned subsidiary of Moore Corporation Canada (MCC). After reviewing the performance of its operations, MCC made a decision to exit from the Asia-Pacific region. On 31 December 1998 it sold its Australian business to a consortium that included the existing management of the Australian business.

Moores is a leading player in the commercial print market. It employs more than 650 people. Apart from CCP, its business includes:

- printed products (e.g. forms, labels, tickets and marketing materials);
- electronic forms;
- imaging; and
- warehousing distribution.

Customs estimates that the like goods account for about 10 per cent of the total revenue of Moores.

Moore's operates 5 plants for its commercial printing and forms manufacturing activities. There are plants in Melbourne, Brisbane, Adelaide and 2 in Wodonga (Wodonga 2 and Wodonga 3 plants). Customs inspected both the Wodonga plants.

Moore's manufactures all its CCP at the Wodonga 2 plant. The company employs about 300 people at its Wodonga site.

4.3 Conclusion

Based on verification of information provided by Moore's and inspection of Moore's plant at Wodonga, Customs is satisfied that there is an Australian industry producing like goods and that at least one substantial process in the manufacture of the goods is carried out in Australia.

Accordingly, the requirements of s. 269T(2), (3) and (4) of the Act have been met.
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The like goods are not close processed agricultural goods as set out in s. 269T(4A) and (4B).

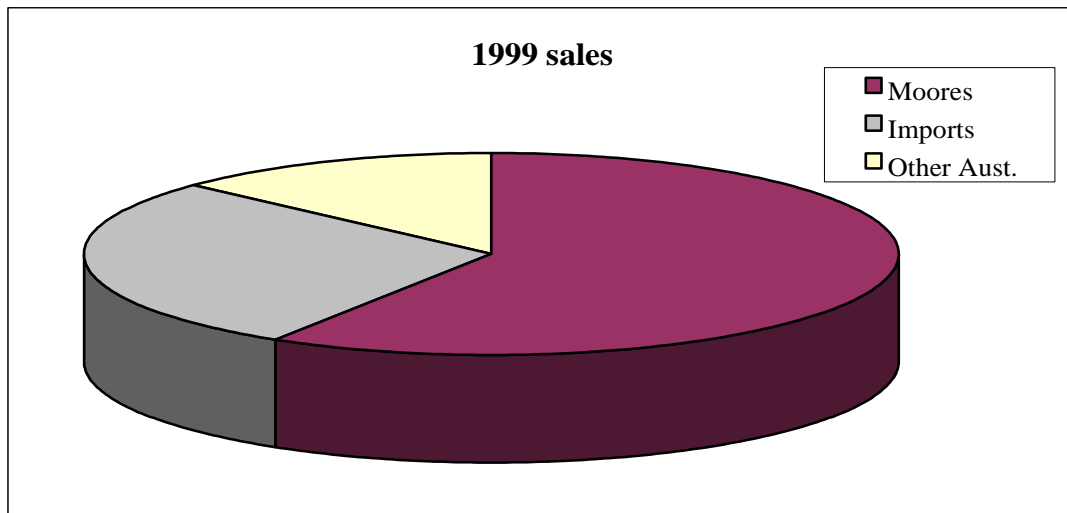
5 THE AUSTRALIAN MARKET

Details of the Australian market for CCP are at confidential attachment 6.

5.1 Market structure

The Australian market for CCP is supplied by Moores, other Australian producers and imports from Indonesia. The structure of the Australian market for CCP is shown in graph 1.

Graph 1: Market structure



The distribution channels for CCP are quite complex. Broadly, there are two channels: direct and indirect.

The direct channel comprises sales from the manufacturer or importer (directly) to end-users. This mainly occurs with major end-users, such as banks.

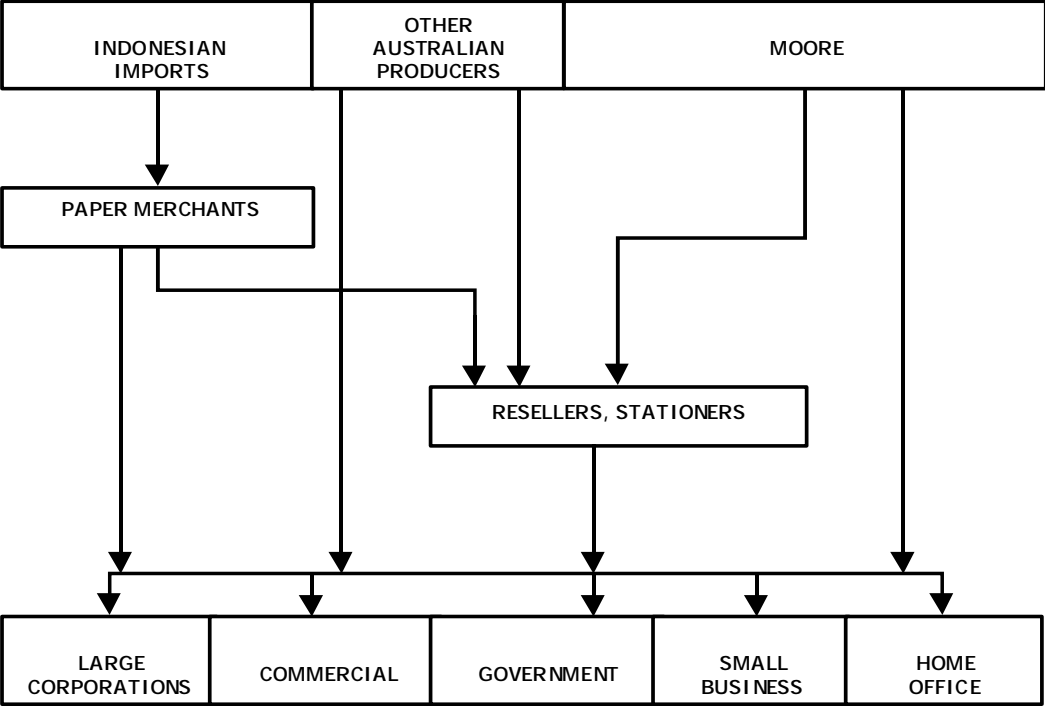
The indirect channel comprises selling through one of many types of intermediaries, such as:

- brokers (e.g. Completer Print, DMC);
- national corporate stationers (e.g. Corporate Express, Boise Cascade);
- catalogue sellers (e.g. Viking Office Supplies);
- stationery super stores (e.g. Officeworks);
- general stationers;
- buying groups of independent dealers; and
- wholesalers.

There appears to be a shift away from direct channels to the indirect channels, although selling through the direct channels remains substantial.

The distribution channels for CCP are illustrated in diagram 1.

Diagram 1: Distribution channels



5.2 Market size

As stated in 5.1, the Australian CCP market is supplied by:

- Moores;
- other Australian producers; and
- Indonesian imports.

Customs visited Moores and obtained its sales.

Customs visited Asia Pulp & Paper Australia (APP (Aust)), and obtained information on its imports from Indonesia and on its sales to merchants such as Spicers and Commonwealth Paper.

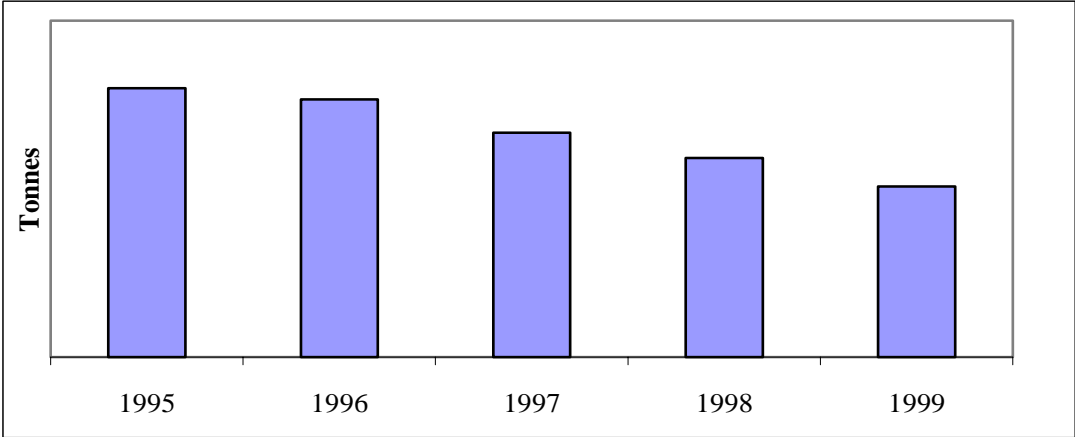
Customs also visited these merchants to obtain information on their sales of CCP in Australia.

In addition Customs used information obtained from its commercial database (TRACE) and from its visit to Tjiwi Kimia (the Indonesian exporter) to validate the information on imports.

Customs contacted all known other Australian producers of CCP. These producers provided estimates of their production.

Using the information available, Customs estimates the current (1999) Australian market for CCP to be about 16,000 tonnes. As previously mentioned, the market for CCP has been declining in recent years as consumer preference, led by technological developments, shifts away from tractor feed dot matrix printers to other printing mediums, such as laser printers using cut-size paper. The market trend for CCP is illustrated in graph 2 (note that the figures for 1995, 1996 and 1997 are based on industry estimates).

Graph 2: Market size



6 THE DUMPING INVESTIGATION

Dumping occurs when the export price of a product is less than the normal value of the same (or similar) product in the domestic market of the country of export. This section explains the results of Customs' investigation of this aspect.

6.1 Background

In its application, Moores identified a number of producers/exporters of CCP operating in Indonesia. All are part of the Sinar Mas Group of companies. Customs inquiries revealed that only one of these companies, Tjiwi Kimia, had exported the goods under consideration from Indonesia during the investigation period. All the exports were to the one Australian importer.

6.2 Export price

Customs contacted Tjiwi Kimia advising it of the investigation and the company provided a submission. Customs visited Tjiwi Kimia and confirmed that Tjiwi Kimia manufactured the goods.

APP (Aust), a company that belongs to the same corporate group as Tjiwi Kimia, is the importer. Customs visited APP (Aust) and confirmed that APP (Aust) imported the goods from Indonesia.

Customs investigations revealed that Asia Pulp & Paper International Trading Ltd (Singapore) (APPIT) arranges sale transactions between Tjiwi Kimia and APP (Aust). APPIT is a selling intermediary which also belongs to the same corporate group as Tjiwi Kimia and APP (Aust).

Customs considers Tjiwi Kimia to be the exporter as, in addition to manufacturing the goods, Tjiwi Kimia:

- negotiates the sale with APP (Aust) and merchants in Australia;
- packs and delivers the goods to the port;
- arranges the overseas shipping and preparation of the bill of lading; and
- pays the shipping line.

APP (Aust) places its orders for CCP with APPIT and pays APPIT for the goods. Customs considers APPIT to be the seller of the goods.

As Customs knew that Tjiwi Kimia, APPIT and APP (Aust) were companies of the APP group it conducted extensive checking to verify whether export transactions were arms length. Important aspects of this verification were:

- checking the sales of APP (Aust) to merchants in Australia; and
- assessing whether the on-sales of Indonesian CCP by merchants in Australia were profitable.

Customs visited two merchants, Spicers and Commonwealth Paper, to obtain and verify information. It found that their sales of Indonesian CCP were profitable. Customs also notes that these merchants are unrelated to the APP group.

Customs found no evidence to suggest that the export transactions were non-arms length.

Customs verified the information provided by Tjiwi Kimia and considers that export prices can be determined ex-factory or FOB Surabaya.

As a consequence of its inquiries, Customs is satisfied that:

- sales to the Australian importer (APP (Aust)) were arms length;
- the goods were exported to Australia other than by the importer; and
- the goods were not purchased by the importer from the exporter.

Since the goods were not purchased by the importer from the exporter Customs is unable to determine export prices under s. 269TAC(1)(a).

Customs recommends export prices be determined under s. 269TAB(1)(c) of the Act using the price paid by the importer less post exportation expenses.

Export price calculations are shown at confidential attachment 7.

6.3 Normal value

In determining normal values for Tjiwi Kimia, Customs considered the information provided by Tjiwi Kimia in its submission and verified by Customs during its visit to Tjiwi Kimia.

Customs spent considerable time verifying Tjiwi Kimia's cost to make and sell information, including pulp purchases, overheads and financial costs. Also, domestic sales at the appropriate level were examined.

As mentioned above, Tjiwi Kimia is the manufacturer of the goods under consideration. On the Indonesian domestic market, Tjiwi Kimia sells a range of CCP products. It sells these products through a subsidiary company, PT Mega Kertas Pratama (MKP). Customs identified like goods to the goods exported and examined all domestic sales of those goods for transactions between MKP and the various distributors.

Customs verified the price paid by customers for domestic sales. Customs was satisfied that the sales were arms length transactions.

Customs calculated the unit cost to make and sell for each like good for each month of the investigation period. Tjiwi Kimia's domestic selling prices were compared to the relevant month's cost to make and sell for the particular like good. The comparison showed that some domestic sales were at a loss. These sales were then examined pursuant to s. 269TAAD(3). Those sales that did not satisfy this test were regarded as not in the ordinary course of trade.

Customs determined that the volume of relevant domestic sales was not less than 5 per cent of the volume of exported goods. Therefore Customs concluded that relevant domestic sales were not 'low volume' for purposes of s. 269TAC(2)(a)(i).

No market factor was identified to render domestic sales to be unsuitable within the meaning of s. 269TAC(2)(a)(ii) of the Act.

Customs concluded that domestic sales of like goods were suitable for determining normal values.

Customs considers that certain adjustments, as per Table 1, should be made to the delivered net price to (domestic) customers pursuant to s. 269TAC(8) to ensure fair comparison with export prices and recommends accordingly.

Table 1: Adjustments to the Tjiwi Kimia domestic price

Negative adjustments	Positive adjustments
distributor margin	export packing
level of trade	fumigation
specification	export marketing services
	domestic freight
	export credit terms

Therefore Customs determined normal values under s. 269TAC(1) of the Act with adjustments under s. 269TAC(8) of the Act.

Normal value calculations are at confidential attachment 8.

Details of Tjiwi Kimia’s cost to make and sell are at confidential attachment 9.

6.4 Dumping margins

A dumping margin is the amount by which the export price is less than the normal value. It is expressed as a percentage of the export price. Under s. 269TACB, the margin may be established on the basis of a comparison of:

- weighted averages of comparable normal values and export prices; or
- normal values and export prices on a transaction by transaction basis; or
- individual export prices and normal values over part or parts of the investigation period, and weighted average export prices and normal values over another part, or other parts of the investigation period; or
- a weighted average of normal values and individual export price transactions (if the export price differs significantly between purchasers, regions, or time periods).

Customs used weighted averages of comparable transactions over the investigation period to assess dumping. The results are shown in Table 2.

Table 2: Customs assessment of dumping margins

15 x 11		9.5 x 11		A4
60 gsm	70 gsm	60 gsm	70 gsm	70 gsm
-1.1%	-2.9%	-1.7%	-4.4%	-3.5%

The margins shown above differ from those shown in the SEF. As stated in section 6.3 of the statement, Tjiwi Kimia had claimed an adjustment for level of trade that Customs, because it was still considering the claim, did not include in the dumping margin calculations. Customs considers the level of trade adjustment is reasonable and has now included it in the dumping margin calculations.

Dumping margin calculations are at confidential attachment 10.

6.4.1 Negligible dumping margins

Section 269TDA(1) of the Act requires the CEO to terminate an investigation, in relation to an exporter, where there has been:

- no dumping by the exporter, or
- where all of the exporter's dumping margins are negligible (*de minimus*), i.e. where margins worked out under s. 269TACB of the Act, when expressed as a percentage of the export price or weighted average of export prices, are less than 2 per cent.

The results of Customs investigation, as set out above, show that the provisions of s. 269TDA(1) have been satisfied.

6.4.2 Negligible volume of dumped goods

Section 269TDA(3) of the Act provides that:

if the volume of goods exported to Australia, over a reasonable examination period (whole or substantial part of the investigation period), from a particular country, that have been dumped is negligible, the CEO must terminate the investigation so far as it relates to that country.

This section defines a negligible volume of dumped goods as that which, when expressed as a percentage of the total Australian import volume, is less than 3 per cent.

Customs did not test the requirements of this provision as no dumping was found.

7 THE ECONOMIC CONDITION OF THE INDUSTRY

7.1 Introduction

This section reports the results of Customs consideration of the economic performance of the industry producing CCP and its assessment of whether there are any signs that the industry has been injured.

Note that the y-axis of graphs used in this chapter have been blanked for confidentiality reasons.

7.2 Applicant's claims

In its application, Moores stated that it began to experience material injury in the September quarter, 1996. Moores claimed:

- price undercutting;
- price depression and suppression;
- lost sales and market share;
- loss of profits and profitability;
- reduced return on investment;
- impaired ability to raise necessary capital; and
- workforce reductions.

Moores later identified reduction of capacity utilisation as an additional injury factor.

Each of the above injury claims is addressed in this part of the statement.

Moores claimed that it had been suffering material injury from the last quarter of 1996 and it asked Customs to consider injury since then. Customs, however, did not examine such a long period (nearly four years) due to the following reasons.

First, the purpose of Customs injury examination is to link it to dumping. A finding of injury is not actionable under anti-dumping provisions unless it can be demonstrated that dumping, of itself, caused the material injury. Such a finding would be impracticable over four years given the data requirements and the limitations on investigation time. Usually Customs, like overseas dumping administrations, considers a one-year investigation period for dumping analysis.

Secondly, Customs considers that an industry will complain of dumping and apply for an anti-dumping investigation as soon as it believes that dumping is occurring. It is unlikely that an industry will wait for years before applying. Customs recognises that Moores had applied for anti-dumping measures previously but Customs did not initiate an investigation. However, the first application to Customs for measures on CCP was made by the Printing Industries Association of Australia (of which Moores was a member) in October, 1998 — well after the commencement of the claimed injury.

Thirdly, the Australian CCP market has been significantly affected by technology. All interested parties accept that a part of the decline in this market is due to changes in technology. But how much a part is difficult to estimate and is under dispute. Moores claims that the impact of technology is small but many others disagree (some argue that all the decline is due to this reason). These claims and counterclaims are to be expected given their respective (contradicting) interests in this investigation. Customs would have to isolate the technological effects on Moores' performance if it considers a lengthy injury period. This is impracticable given the long time lapse.

Fourthly, another change in the CCP market is intermediation, which also poses a similar problem if Customs considers a lengthy injury period. Intermediation is the entry into the market of companies that bundle the supply of a range of services, claiming to provide additional value to end-users. Corporate Express, Boise Cascade, Officeworks are examples of such intermediaries. Technology that enables electronic interface between business-to-business and business-to-consumer is one factor driving this change. Outsourcing of the purchasing function by many large organisations is another factor. Customs understands that this trend is not specific to Australia — it is a worldwide trend. These intermediaries are large and exert considerable market power. They have the ability to squeeze the margins of stationery suppliers like Moores.

Finally, Customs is aware from the knowledge obtained in previous investigations that 1995-96 was a peak period in the paper industry. Most paper companies worldwide (including in Australia) made large profits at this time. Customs considers that such a trend would have applied to Moores also. Therefore Customs is reluctant to compare the peak period (1996) with subsequent periods, as any decline in subsequent periods is likely to be significantly influenced by business-cycle considerations rather than dumping.

7.3 Price trends

7.3.1 Price undercutting

Price undercutting occurs where the imported product sells below its Australian equivalent. Moores claimed that the selling prices of Indonesian CCP had undercut its prices.

The complexity of the market structure made the examination of this claim difficult.

First, Moores sells CCP through direct and indirect channels whereas APP (Aust) sells to merchants which then on-sell through direct and indirect channels. So comparing the importer's (APP (Aust)) prices with Moores' selling prices would be misleading. Therefore Customs compared merchants' selling prices of Indonesian CCP with Moores' selling prices.

Such comparison also has a flaw, as it compares the selling prices of merchants and not of the importer (with Moores). As the merchants are independent companies the importer has little control over merchants' selling prices (apart from its own selling prices to merchants which would in turn influence merchants' selling prices).

Secondly, merchants' selling prices obtained by Customs were average prices for the period. These prices covered a range of customers at different levels of trade, who purchased varying quantities and had different rebate entitlements. Therefore the comparison of merchants' average prices with those of Moores is of limited value.

Finally, Customs did not have verified information on sales by other Australian CCP manufacturers.

Customs found that the average price of merchants was marginally above Moores' prices. However given the above limitations Customs is unable to rely on this finding.

Thus Customs was unable to establish to its satisfaction that price undercutting had occurred.

Details of price undercutting are at confidential attachment 11.

7.3.2 Price depression

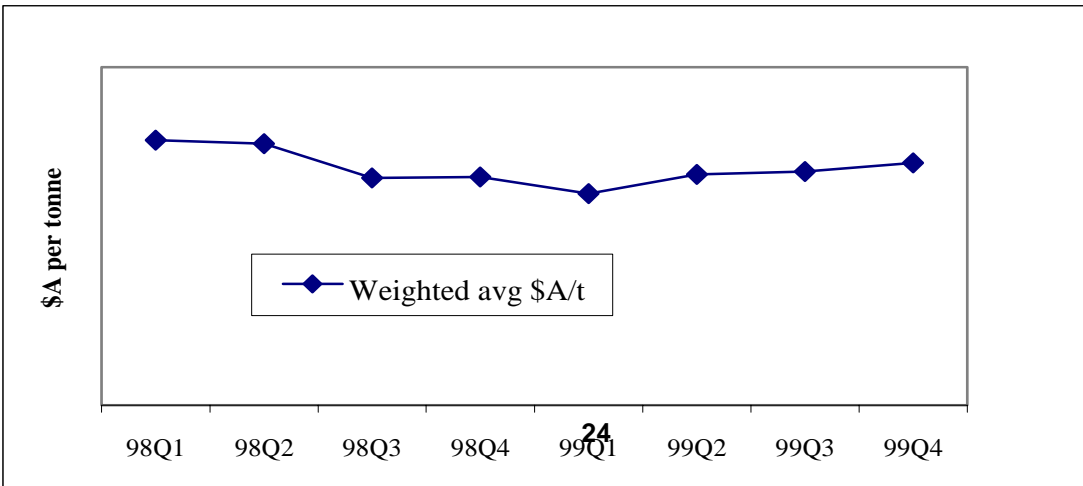
Price depression occurs when the Australian industry, for some reason, lowers its prices.

Moores provided data on its domestic quarterly average selling prices to support its claim of price depression.

In addition, it provided market visit reports by its sales representatives that described price movements in the market and the pressures on Moores to reduce prices. Customs, however, focused on verified data.

The appendix 4 revenue data was graphed on a per unit quarterly basis throughout 1998 and 1999 — refer graph 2.

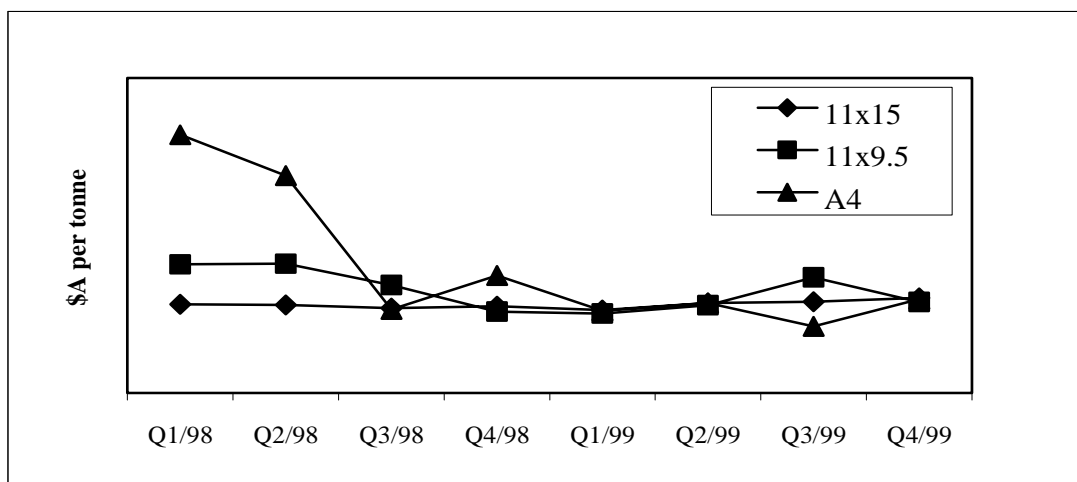
Graph 2: Price depression



While some modest depression has taken place over the period the trend did not provide strong evidence in support of the claim of price depression.

As well as providing consolidated revenue figures, Moores provided financial data on each of the types of continuous computer paper under investigation — see graph 3.

Graph 3: Price depression by type of product



The graph shows that significant price depression occurred with A4 CCP from the first quarter 1998 to the third quarter 1998. From the third quarter 1998 the price has remained relatively stable (albeit at the much reduced level).

The other narrow paper (11" x 9.5") showed a similar pricing trend, although the extent was less dramatic but still significant.

The wider paper (11" x 15") actually increased moderately in price across the injury period. This explains the outcome above relating to average sales revenue per unit. Sales of the wider paper account for around two thirds of Moores' CCP sales. Therefore, the modest increase in sales revenue per unit of this grade largely offset the lower sales revenue per unit of the smaller volume narrower grades.

Notwithstanding that the overall sales revenue per unit did not decrease significantly across the period, sales revenue per unit of two grades (the narrow grades), representing a third of Moores' sales, did decrease significantly.

Customs is satisfied that Moores suffered price depression.

Details of price depression are at confidential attachment 12.

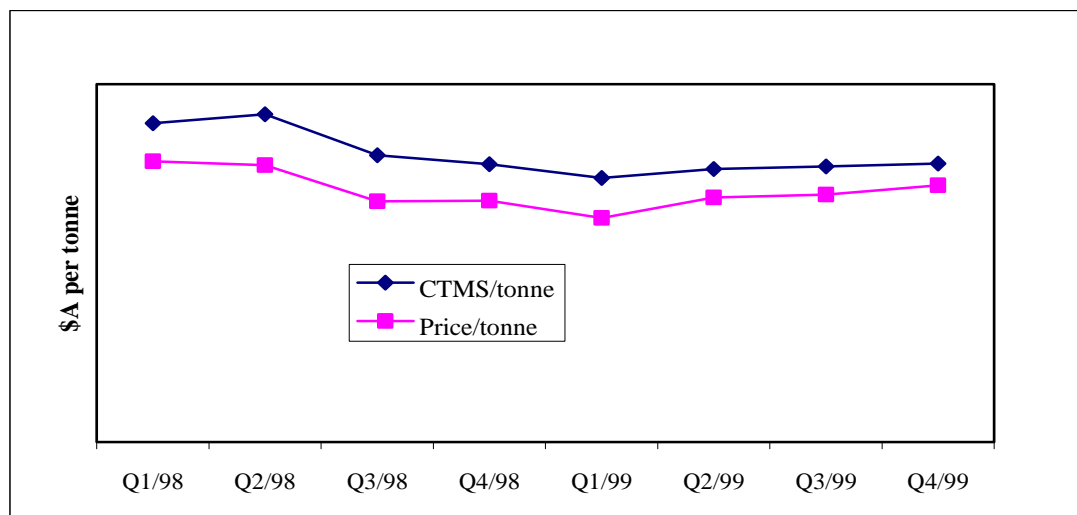
7.3.3 Price suppression

Price suppression occurs when the margin between a company's costs and prices is reduced. In this case, the margin has been negative throughout the analysis period. Therefore an increase in margin indicates price suppression.

Customs verified data provided by Moores on its cost to make and sell CCP. Customs used this data to calculate the quarterly weighted average cost to make and sell (CTMS) CCP.

To assess price suppression, Customs compared Moores' quarterly weighted average CTMS with corresponding quarterly weighted average prices. This data is shown in graph 4.

Graph 4: Price suppression



The graph highlights that the margin between average price and cost worsened in the second quarter 1998 and the first quarter 1999. In every other quarter during the injury analysis period the difference between price and cost improved when compared to the previous quarter. In the last quarter of 1999, the difference between price and cost was the most favourable compared with any other time during the injury analysis period.

Considering the foregoing, Customs considers that Moores' claim of price suppression is not substantiated.

Details of price suppression are at confidential attachment 13.

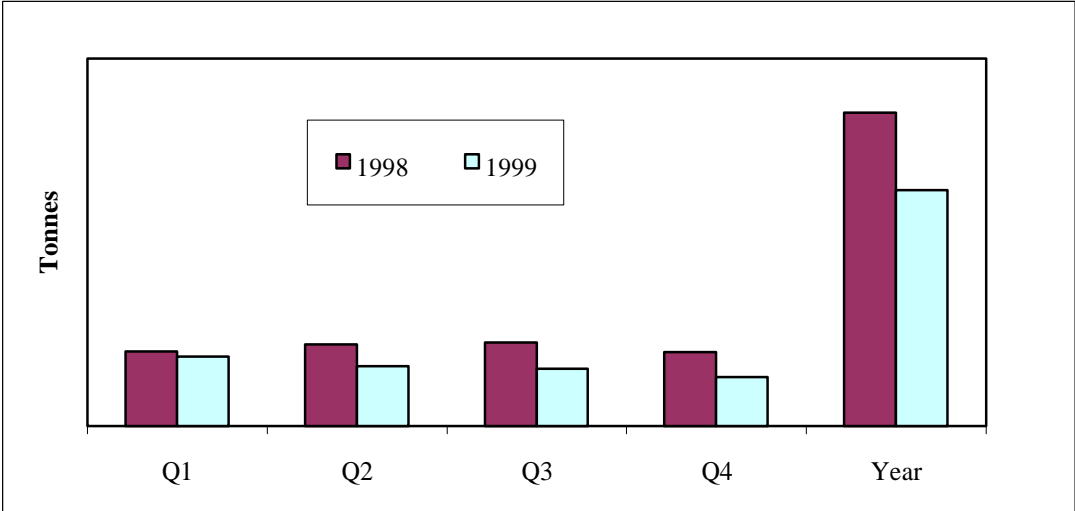
7.4 Volume trends

7.4.1 Sales volume

Moores claimed injury from lost sales.

Moore's provided sales information in its application, which was verified by Customs during its visit to Moore's. This information is shown in graph 5.

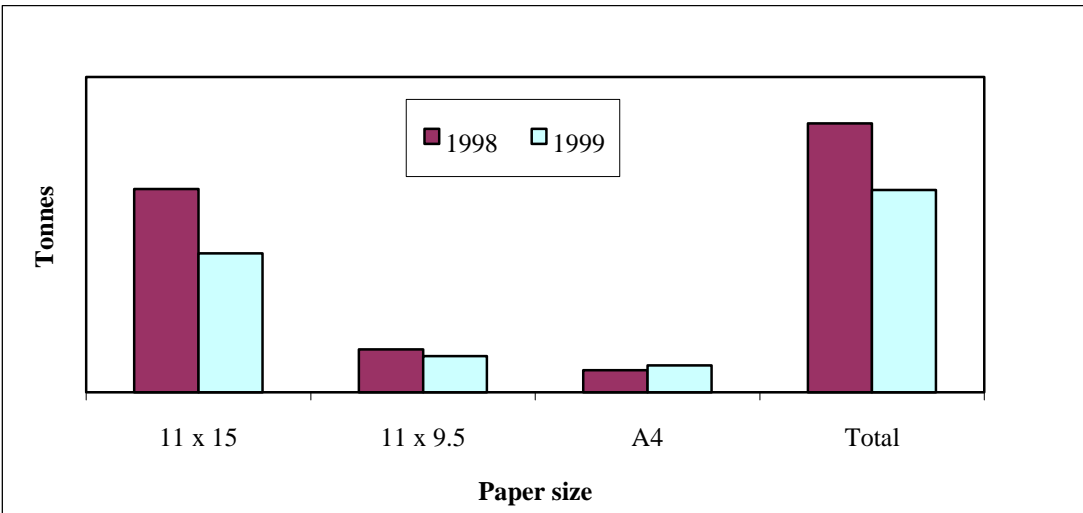
Graph 5: Moore's sales volumes



Moore's sales of continuous computer paper, in the sizes under investigation, declined significantly between 1998 and 1999. The pattern was consistent throughout the year, with the sales volume for each quarter of 1999 significantly below the corresponding period of the previous year. Moore's provided details of individual customers who had historically purchased from Moore's but who were now sourcing from elsewhere.

Customs also examined sales volumes for each of the types of paper under investigation, as shown in graph 6.

Graph 6: Sales volumes by type of product



The analysis shows that the sales volume for the wide paper (11" x 15") declined significantly in 1999 compared with 1998, while combined sales of the narrower grades were relatively steady (decrease in sales of 11" x 9.5" offset by increased sales for A4). Customs understands that these latter two sizes are interchangeable so the movement in sales volumes between the two may represent a shift in customer preference from 11" x 9.5" towards A4. Sales of 11" x 15" represent by far the greatest proportion of total sales so the loss of sales in this sector has had significant impact on total sales.

On the basis of the above, Customs is satisfied that Moores suffered lost sales.

Details of sales volume are at confidential attachment 14.

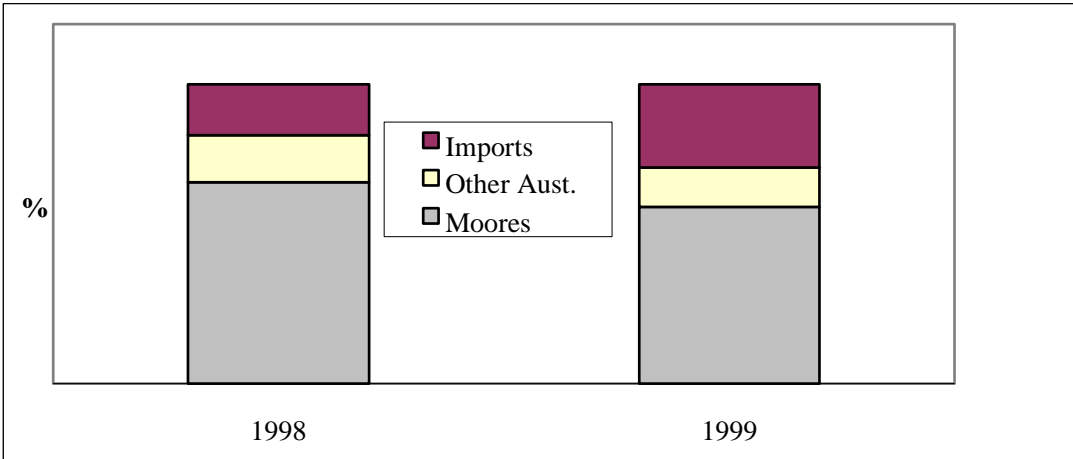
7.4.2 Market share

Moores claimed injury from reduced market share.

Customs used information sourced from Moores, other Australian producers, the exporter, the importer and TRACE to test this injury claim.

Market share is shown in graph 7. The graph demonstrates that Moores' market share decreased in 1999 compared with 1998, while the market share of Indonesian imports increased. The share of the market held by other Australian producers also declined slightly in 1999.

Graph 7: Moores' market share



Customs is satisfied that Moores lost market share.

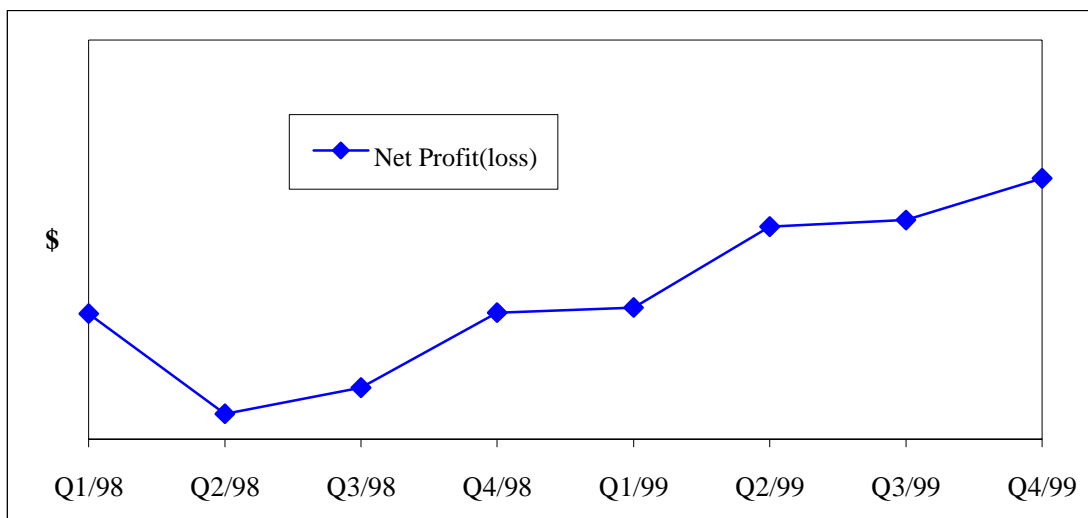
Details of market share are at confidential attachment 14.

7.5 Profit and profitability

Moores claimed injury from loss of profits and profitability.

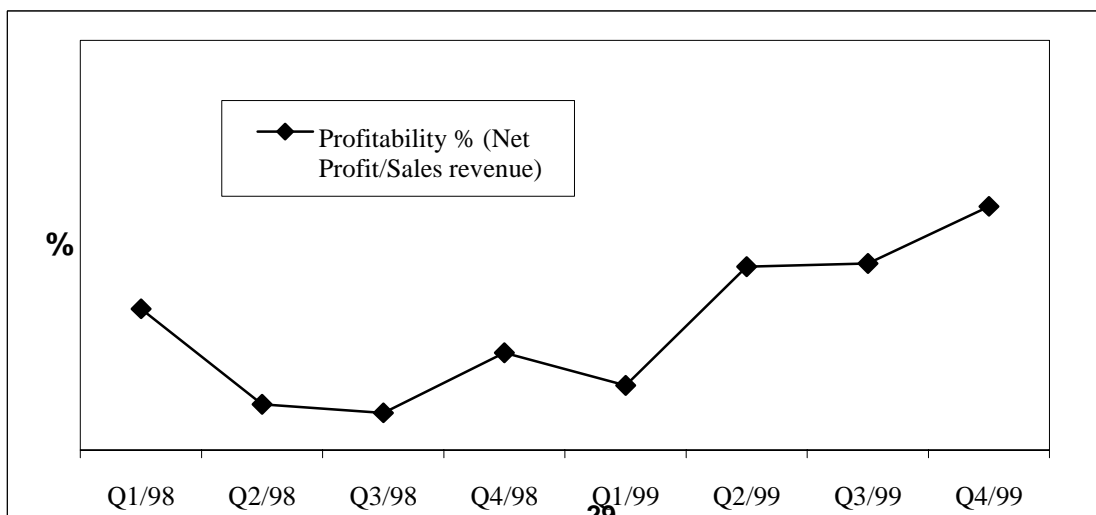
Moores' application included data on its profit and profitability that Customs verified during its visit to Moores. The data has been graphed for the like goods at graphs 8 (profit) and 9 (profitability).

Graph 8: Quarterly net profit (loss)



The data shows that Moores' results have improved each quarter since the second quarter 1998, albeit that the company has been making overall losses for sales of these goods throughout the period. Moores' calendar year result improved significantly in 1999 compared with the 1998 result.

Graph 9: Profitability



This improving net result position is reflected in improving profitability (net profit to sales revenue), with an upward trend occurring since the third quarter 1998. Despite this trend, profitability has been negative throughout the period.

Customs found that each type of CCP (broad, narrow and A4) were not costed individually. Rather all CCP was costed in total and then costs were allocated to each type. As such, profitability of each type would be misleading (due to the significant impact of cost allocations). Hence Customs did not ascertain the profitability for individual types of paper.

On the basis of the available evidence, Moores' profit and profitability levels have not deteriorated during the injury analysis period. However, the company has recorded overall losses and negative rates of profitability from its CCP business throughout this period.

Details of profits and profitability are at confidential attachment 15.

7.6 Other injury factors

7.6.1 Reduced return on investment

Moores claimed that its ability to fund new investment across its business has been seriously eroded because the poor results (losses) from the CCP business affected the company's ability to satisfy shareholders expectations in respect of earnings. Moores argues that shareholders have an expectation of a minimum 15 per cent return on sales. However, the current level is much lower than this, due in no small part to losses from CCP.

Given that Moores' CCP business is making losses Customs considers that Moores' claim of inadequate return is justified.

7.6.2 Impaired ability to raise new capital

Moores did not specifically address this injury claim in its application, although the company did refer to it indirectly when addressing other matters, such as the injury claim addressed in section 7.6.1.

Evidence supporting this claim was not produced during Customs visit to Moores. Customs is therefore unable to establish whether Moores suffered from impaired ability to raise new capital.

7.6.3 Workforce reductions

Moores stated in its application that it employs 300 people in Wodonga and injects \$20 million into the local economy. It further stated that if it continues to lose market share and profitability it may have to close the Wodonga 2 plant and perhaps transfer its non-CCP business from Wodonga. This would, Moores claims, result in a direct loss of

jobs at the Wodonga plant (and elsewhere in the company) as well as having a flow on effect resulting in further job losses in the Wodonga region.

Customs appreciates the difficulties that Moores is currently experiencing and the possible ramifications for the company and the region. However, the anti-dumping legislation confines injury investigation to the goods under consideration and the like goods (CCP). Therefore, Customs' investigation must focus on this narrower aspect of the company's operations.

In this respect, Customs verified that Moores' CCP is produced at the Wodonga site and that a large number of people are employed in the production process.

Moores did not provide evidence of any actual job losses to date. Rather its argument for this injury claim is primarily based on what might happen if Moores ceased making CCP and the Wodonga 2 plant closed.

Customs recognises the above scenario as a possibility. However, it prefers not to speculate about the future. Customs prefers to focus on actual evidence rather than what-if scenarios.

As Moores did not provide evidence of job losses, and given that the goods under reference account for only about 10 per cent of Moores' sales, Customs is unable to conclude that Moores suffered workforce reductions.

Customs also notes that currently firms voluntarily reduce workforce to cut costs and claim credit for doing so. External analysts and stock markets appear to welcome such measures. Hence, reduction in employment need not reflect company performance generally.

7.6.4 Degree of utilisation of capacity

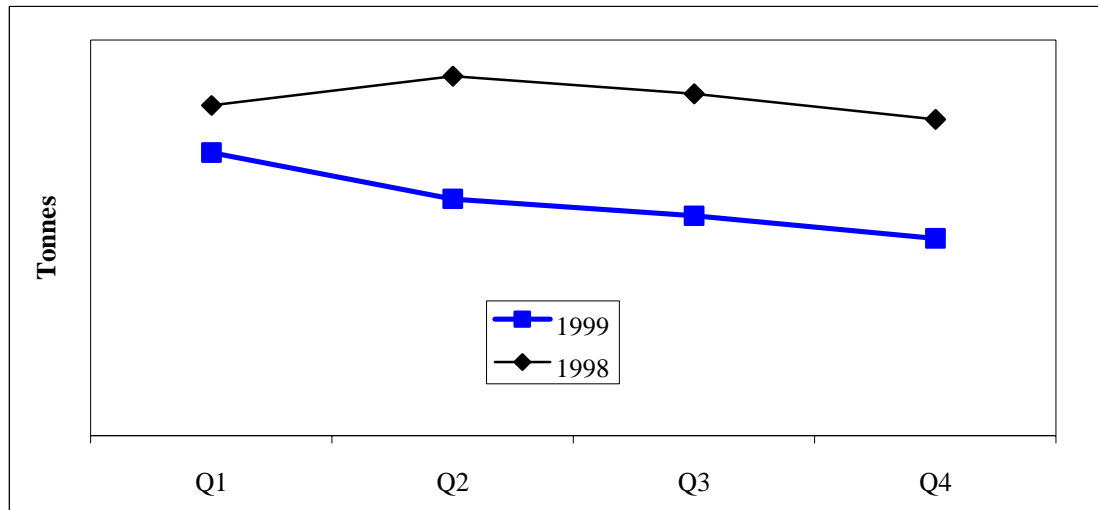
Moores stated that:

capacity utilisation has decreased over time even as rationalisation for survival has occurred. The capacity that remains in operation is not fully utilised.

Verified data provided by Moores showed that in the past 3 years capacity utilisation has fallen by 18 per cent compound. This has resulted in the permanent closure of two of its five forms presses - one in 1998 and one at the end of 1999. During Customs inspection of the Wodonga 2 plant one of these idle presses was observed.

Verified production data given by Moores highlights the declining trend in production, shown in Graph 10. Production in 1999 declined by about 30 per cent, compared with production in 1998.

Graph 10: Moores' quarterly production



Details of production are at confidential attachment 16.

Customs is satisfied that Moores suffered a reduction in capacity utilisation.

7.7 Conclusion

Over the period examined Customs found that Moores suffered:

- lost sales and market share;
- some price depression;
- loss of capacity utilisation; and
- losses and negative profitability

in its CCP business.

Customs concluded that Moores suffered injury from some cause or causes and that the injury was material.

8 HAS DUMPING CAUSED MATERIAL INJURY?

Customs is satisfied that Moores has suffered material injury from some cause or causes.

The next step in the process is for Customs to determine whether that injury has been caused by dumping or by other causes.

8.1 Issues raised by interested parties

The following issues were raised either in submissions to Customs or during visits to interested parties by Customs.

- The market for CCP is declining due to technological developments which have resulted in a consumer preference shift away from continuous paper to cut-size paper. This is the reason Moores is losing sales.
- As the market for CCP declines, Moores (and other sellers) are forced to price CCP attractively in order to encourage customers to continue to use CCP rather than move to new technology — hence declining prices.
- As stated in section 7.2 of this report, intermediaries have had substantial impact. Also, the move away from direct channels of distribution to indirect channels was affecting pricing as distributors/resellers used purchasing power to pressure suppliers into lower prices.
- Moores has a dominant position in the CCP market and major customers do not want to be dependent on a single source of supply — imports are supported by these customers to ensure alternative sources of supply.

Many interested parties wrote to Customs expressing support for Moores' application. Most letters emphasised the importance of Moores to the economic and social well being of the Wodonga area (where CCP is manufactured). Customs took these concerns into account, as far as they related to dumping and material injury.

8.2 Moores' claims

In its application and during the visit Moores emphasised the poor state of the domestic industry manufacturing CCP. In this section, Moores' description of the condition of the industry is summarised.

The Australian CCP industry currently confronts:

- a declining market because of a consumer preference shift away from CCP towards cut-size paper; and
- aggressive competition from Indonesian imports of CCP that are being sold into the Australian market at dumped prices.

While Moores' CCP business can manage and accommodate the gradual market decline for that product, its CCP business cannot survive continued dumping of CCP from Indonesia onto the Australian market.

Indonesian imports began entering the Australian market in the September quarter 1996. Until then prices for CCP in Australia (and paper products generally) were relatively strong and Moores was making moderate profits on its single part CCP.

The relatively high prices for paper products in the mid-1990s encouraged capacity expansion by paper producers, in particular by the Indonesian manufacturers. Australia became a potential market for some of this additional production and CCP from Indonesia began to come onto the Australian market from late 1996.

To gain a foothold in the Australian market, Indonesian imports were offered at prices that undercut domestic producers. In order to retain customers, domestic producers were forced to follow import prices down with their own pricing. Severe price falls occurred throughout 1997 turning the domestic industry from a profitable one into a loss making one.

Consequences on Moores from the (claimed) dumped imports from Indonesia include the following.

- A fall of about 30 per cent from 1995 to 1999 in Moores' average revenue per unit sold of single part CCP.
- The result of the decline in average revenue per unit has been that profitability of Moores' single part CCP business has declined significantly since the third quarter of 1996.
- Moores' share of the Australian market has fallen by about 33 per cent (adjusted for its purchase during the period of a local competitor) since 1995.
- Moores' sales tonnages declined by about 35 per cent from 1995 to 1999.
- Moores has permanently closed two of its forms presses.

8.3 Customs assessment

Customs investigation revealed (refer section 6.4) that there were no dumping margins.

Therefore dumping cannot be causing the material injury suffered by Moores.

8.4 Threat of dumping in the future

As required by s. 269TEA of the Act, Customs, to the extent practicable, examined imports of the goods until 14 August 2000.

Customs has no evidence that the situation in respect of exports of Indonesian CCP is likely to change significantly.

8.5 Conclusion

Customs is satisfied that material injury suffered by Moores was not caused by dumping.

Customs is not satisfied that future exports of CCP from Indonesia are likely to be dumped to the extent of causing material injury to Moores in the near future.

9 RECOMMENDATIONS

Customs is satisfied that Moores suffered material injury by some cause or causes.

However, Customs is not satisfied that dumping caused the material injury suffered by Moores.

Further, Customs is not satisfied that future exports are likely to be dumped to the extent of causing material injury to Moores, as there is no evidence that the situation in respect of exports of Indonesian continuous computer paper is likely to change substantially.

Customs recommends that the minister take no anti-dumping action against exports of continuous computer paper from Indonesia.

Customs recommends that the minister determine:

- pursuant to s. 269TAAD(4) of the Act, the amount to be the cost of production or manufacture of like goods of continuous computer paper for Pt Pabrik Kertas Tjiwi Kimia Tbk of Indonesia and the amount to be the administrative, selling and general costs associated with the sale of those goods;
- pursuant to s. 269TAB(1)(c) of the Act, having regard to all the circumstances of exportation, export prices in respect of exports to Australia of continuous computer paper by Pt Pabrik Kertas Tjiwi Kimia Tbk of Indonesia;
- pursuant to s. 269TACB(1) of the Act, by comparison of the weighted average of export prices and the weighted average of normal values of continuous computer paper, that exports of those goods by Pt Pabrik Kertas Tjiwi Kimia Tbk were not dumped.

Customs recommends that the minister direct that:

- pursuant to s. 269TAC(8) of the Act, the price paid for like goods exported by Pt Pabrik Kertas Tjiwi Kimia Tbk of Indonesia be adjusted for differences between domestic and export sales in distributor margins, domestic freight, fumigation, level of trade, specification, export packing, export marketing services and export credit terms.

To give effect to these recommendations, Customs recommends that you sign the appropriate instruments and schedules attached to this report.

LIST OF ATTACHMENTS

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6*	Australian market	5	15
7*	Export price	6.2	18
8*	Normal values	6.3	19
9*	Cost to make and sell	6.3	19
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13*	Price suppression	7.3.3	26
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* confidential attachments

ATTACHMENT 1

Glossary

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 Export Price, Normal Value And Non-Injurious Price

Where a decision is taken to impose provisional or final dumping measures, it is necessary to ascertain what is or would be the normal value, the export price and the non-injurious export price (in the case of final measures) of those goods. The details of these ascertained prices must be published in the formal notice unless the release of such details contains information regarded by an interested party as confidential. The ascertained export price should not be confused with the actual export price.

See also *Normal Value, Export Price, Non-Injurious Price and Interim Duty*

Australian Industry

Section 269T(4) of the *Customs Act* states there is an Australian industry in respect of 'goods of a particular kind' if there is a person or persons who produces like goods in Australia. Where the like goods are close processed agricultural goods, the Australian industry will include producers of raw agricultural products.

Goods are not regarded as produced in Australia (other than unmanufactured raw products) unless the goods are wholly or partly manufactured in Australia. To be considered wholly or partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

Applications must be supported by a sufficient part of the Australian industry. Section 269TB(6) defines a sufficient part of the Australian industry as domestic producers whose collective output is more than 50% of the total production of those that have commented on the application. Supporters of the application must also account for 25% or more of the total production.

See also *Close Processed Agricultural Goods and Like Goods*

Close Processed Agricultural Goods

Refer s. 269(4), (4A), & (4B) of the *Customs Act*. Close processed agricultural goods are defined as goods that are derived substantially or completely from raw agricultural goods

where the raw goods are devoted substantially or completely to the processed goods. There must also be either a close price relationship between the goods, or a significant part of the production costs of the processed goods is constituted by the cost of the raw goods. Producers of close processed agricultural goods form part of the Australian industry in respect of considerations of material injury.

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

Dumping duty is distinct from import duties. Dumping duties may apply to imports covered by measures in accordance with s. 269TG(1) of the *Customs Act* as well as all future imports under s. 269TG(2). Public notice is given if a dumping duty is to be imposed.

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) 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).

See also *Arms Length*

Final Measures

Final 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 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.

Initiation Report

A report recommending or rejecting an application on the basis that reasonable grounds do or do not exist for the publication of a notice. The report will set out the reasons as to whether or not, *prima facie*, the application meets the provisions of s. 269TC of the Customs Act.

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 (i.e.

x% of the export price), as a price per unit of quantity (e.g. \$y per tonne) or as a combination of the two.

See also *Ascertained Normal Value, Export Price and Non-Injurious Price*

Investigation

Customs role in the dumping and subsidisation investigation is to:

- consider applications for the publication of dumping duty and countervailing duty notices;
- make recommendations to the minister on whether sufficient grounds exist or that there are not sufficient grounds for the publication of dumping duty and/or countervailing duty notices; and
- where appropriate, require and take securities in respect of any dumping duty/ countervailing duty that may become payable.

The legislation imposes time limits within which an investigation is conducted:

- 20 days to examine an application and if not satisfied about certain matters reject the application;
- if an application is not rejected, at day 60+ (calculated from the day of initiation of the investigation) to reach a preliminary affirmative determination (if appropriate); at day 110 to issue a statement of essential facts (unless this date has been extended by the minister); and day 155 to make a recommendation to the minister;

Interested parties are invited to make submissions within the first 40 days after the notification of the initiation of an investigation. An extension to a deadline for receipt of submissions by interested parties may be extended if a request is received in writing and the request is reasonable and practicable given the circumstances of the investigation. Interested parties are also given an opportunity to respond to the statement of facts.

Investigation Period

A period specified in the initiation notice over which importations of the goods under consideration are examined. The investigation period is relevant to the application of provisions dealing with such matters as the determination (for normal value purposes) of whether sales are in the ordinary course of trade, and in calculations to establish whether dumping or subsidy is negligible.

Like Goods

Section 269T(1) of the *Customs 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 FOB price (NIFOB) or non-injurious price (NIP) is calculated for this purpose. The NIFOB and the NIP provide 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.

The terms NIFOB and NIP have essentially the same meaning. The term NIFOB is not specifically defined in legislation and applies only to anti-dumping measures imposed before 1 January 1993. The NIP is defined but the method of calculation is not covered in the legislation.

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. From this, the costs incurred in importation are deducted until a notional selling price at an FOB level is derived.

Normal Value

Normal value is the key to establishing whether dumping exists and s 269TAC of the Customs Act sets out the methods used to ascertain the normal value of goods exported to Australia. (Refer to Australian Customs Service Manual Vol. 22 - Dumping & Subsidisation, Division 2 Section 6 for a full discussion on establishing the normal value of the goods).

Usually, the normal value is ascertained under s. 269TAC(1) as the price paid for like goods in the domestic market of the exporting country provided:

- the goods are exported to Australia;
- the sale is in the ordinary course of trade;
- the sale is for home consumption in the country of export;

- the exporter's domestic sales are arms length ;
- the volume of sales in the domestic market of the exporting country is such as to permit a proper comparison with sales to Australia - generally an acceptable volume is taken to be 5% or more of the volume of the goods exported to Australia; and
- the situation in the exporters domestic market is such that the sales are suitable for determining a normal value.

If the exporter's domestic sales do not satisfy all of the above criteria, the same tests are applied to sales by other sellers of like goods on the domestic market of the exporting country.

Normal value cannot be determined under s. 269TAC(1) where:

- domestic sales that would be relevant for determining a price are absent or of low volume;
- the market situation in the country of export is such that it renders domestic sales as unsuitable for use in determining normal value; or
- it is not practical to obtain information in relation to sales by other sellers of like goods on the domestic market within a reasonable period.

Section 269TAC provides alternative methods for determining normal values where the criteria of s. 269TAC(1) are not satisfied.

Under s 269TAC(2)(c) and unless s. 269TAC(2)(d) applies, the normal value of the goods is the sum of:

- the cost of production or manufacture of the goods in the country of export; and
- on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export, the administrative, selling and general expenses (AS&G) associated with the sale; and
- an amount of profit.

In circumstances where a normal value cannot be determined from domestic selling prices because sales are found to be not in the ordinary course of trade, a profit component is not included.

Under s. 269TAC(2)(d) where normal value cannot be determined under the provisions of s. 269TAC(1), and the minister so directs, the normal value of the goods is the price paid for like goods sold in the ordinary course of trade in arms length transactions for exportation to an appropriate third country.

Customs seeks evidence relating to both sections in order to decide which is the most suitable method for ascertaining normal value.

Where it is satisfied that sufficient information has not been supplied or is not available to determine normal values under any of the preceding provisions, the normal value may be ascertained under s. 269TAC(6) having regard to all relevant information.

Section 269TAC(4) provides a number of methods for ascertaining 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.

Sections 269TAC(8) and 269TAC(9) provide for adjustments to be made to the normal value to account for differences where the domestic and export sales prices:

- relate to sales occurring at different times;
- are not in respect of identical goods; or
- are modified in different ways by taxes or terms or circumstances of the sales.

Section 269TAC(10) enables the normal value to be determined in the country of origin instead of the country of export when it is considered appropriate by the minister.

Notice

A notice is a dumping duty or countervailing duty notice. It is a legal document signed by the minister or his/her delegate, giving effect to the provisions of the Customs Act and the Dumping Duty Act.

Ordinary Course of Trade

Section 269TAA of the Customs Act defines sales that are not in the ordinary course of trade. In general, 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 Affirmative Determination

A determination made by Customs not less than 60 days of the date of public notification if provisional measures are to be imposed. Generally it will be published in a national newspaper and an ACDN.

A public report is issued by Customs following consideration of an application for the imposition of anti-dumping or countervailing measures. It contains the preliminary determination and the recommendations concerning provisional measures.

The investigation process will proceed as normal until the recommendation is made to the minister unless an undertaking is offered and accepted.

Provisional Measures - Securities

Generally, provisional measures are applied in order to prevent further injury, or threat of injury, to the Australian industry after the preliminary affirmative determination is made until a final finding is reached (when interim measures may be put in place). Provisional measures may also be collected in other circumstances, for example, a breach of undertaking or where interim duty is payable on goods as a result of an accelerated review.

Securities will be calculated as the sum of:

- (a) the amounts equal to the ascertained dumping margin; and
- (b) the amounts, if any, by which the actual export price is less than the ascertained export price.

Sections 42 to 45 of the act provide the legal authority for Customs to require and take provisional measures in the form of securities, and to refuse delivery of these goods until such time as the required security is given. Securities are collected on an individual shipment basis and in the case where securities have been imposed to protect the Australian industry during the remainder of an investigation, continue to be collected until a recommendation is made to the minister.

Where the minister accepts the recommendation to impose duties, current securities are converted to an interim duty liability. If the interim duty liability for the period of the final finding is less than the amount of securities collected, any additional securities are refunded.

Public File

A file maintained by Customs, in accordance with s. 269ZI of the *Customs Act*, containing non-confidential information pertaining to anti-dumping and countervailing investigations. The file is held at 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.

Scope

Customs cannot recommend to the Minister whether anti-dumping action can be taken unless it has satisfactorily addressed the integral questions: have the goods been dumped, what has been the recent economic performance of the industry and has dumping caused material injury.

Securities - See Provisional Measures

Statement of Essential Facts

A statement placed on the public record at or before day 110 in the investigation process that sets out the facts on which the CEO will base his recommendation to the Minister. The statement invites interested parties to respond to the issues raised therein.

Subsidisation

In many countries, subsidies are provided for the production or export of goods. Where subsidised exports cause, or threaten to cause, injury to an Australian industry, countervailing duties can be imposed.

Subsidisation occurs when a government, or a public body, or a private body who has been entrusted or directed by that government to carry out a function on its behalf; provides a financial contribution towards the production, manufacture or export of goods.

The financial contribution must involve:

- a direct transfer of funds; or
- a direct transfer of funds depending on particular circumstances occurring; or

- the acceptance of liabilities either actual or potential; or
- the forgoing or non-collection of revenue (except an allowable exemption or remission); or
- the provision of services other than normal infrastructure.

Financial contribution can also relate to any form of income or price support that is used to either directly or indirectly increase exports from the country or limit imports into the country.

The financial contributions described above are only considered a subsidy for the goods under consideration if they confer a benefit in relation to those goods.

Section 269TJ of the Act requires a subsidy to be a countervailable subsidy before provisional measures can be imposed. A countervailable subsidy is defined under s. 269TAAC which states that for a subsidy to be a countervailable subsidy, it must be specific and must not be an excluded subsidy. Section 269TAAC further defines the terms “specific subsidy” and “excluded subsidy”.

Section 269TACC outlines how Customs determines whether benefits have been conferred from a countervailable subsidy.

Trade Measures Review Officer

Various sections of the Customs Act refer to Customs decisions that are appealable. Applicants may ask the TMRO to review Customs decisions in the case of:

an application that is not accepted for investigation
 termination of investigations
 a negative preliminary decision under s. 269Z

The TMRO may confirm Customs initial decision or remit the matter to Customs for investigation. The Officer does not perform an investigative function.

Interested parties may also ask the TMRO may also review certain ministerial decisions, such as

the publication of a dumping duty notices
 a decision not to impose duty.

ATTACHMENT 2

List of legal instruments

LIST OF LEGAL INSTRUMENTS

List of documents recommended for the minister's signature to give effect to the following.

- A schedule of directions under subsection 269TAC(8) of the Act.
- A schedule of determinations under subsections 269TAAD(4), 269TAB(1)(c) and 269TACB(1).

ATTACHMENT 3

Evidence relied upon

EVIDENCE RELIED UPON BY CUSTOMS

In this report, in relation to findings of fact, the evidence relied upon by Customs is as follows:

Section

3 The goods under consideration

Evidence relied upon

- Information provided by:
 - the Australian industry;
 - other interested parties; and
 - others.

4 Like goods and the Australian industry

- Information provided by:
 - the Australian industry;
 - the exporter
 - other interested parties; and
 - others.

5 The Australian market

- Information provided by:
 - the Australian industry;
 - the importer;
 - other interested parties; and
 - others.
- Information in the Customs commercial database (TRACE).

6 The dumping investigation

- Information provided by:
 - the exporter;
 - the importer; and
 - other interested parties.

7 The economic condition of the industry

- Information provided by:
 - the Australian industry;
 - the exporter;
 - the importer; and
 - other interested parties.
- Information in the Customs commercial database (TRACE).

8 Has dumping caused material injury?

- Information provided by:
 - the Australian industry;
 - the exporter;
 - the importer; and
 - other interested parties.

9 Threat of continuing material injury?

- Information in the Customs commercial database (TRACE).
- Findings in sections 6, 7 and 8 of the report.

ATTACHMENT 4

Initiation notice



**AUSTRALIAN
CUSTOMS SERVICE**

Australian Customs Dumping Notice
No. 2000/20

CUSTOMS ACT 1901 - PART XVB

**INITIATION OF AN INVESTIGATION INTO THE
ALLEGED DUMPING OF CONTINUOUS COMPUTER PAPER
FROM INDONESIA**

The Australian Customs Service has initiated an investigation into an application lodged by Moore Business Systems Australia Limited on behalf of the Australian industry producing like goods for a dumping duty notice in respect of continuous computer paper exported to Australia from Indonesia.

The application alleges that the goods have been exported to Australia at prices less than the normal values and that the dumping has caused material injury to the Australian industry through:

- ◆ lost sales and market share
- ◆ price suppression
- ◆ price depression
- ◆ reduced equipment utilisation
- ◆ loss of profits
- ◆ reduced cash flow
- ◆ reduced return on investment
- ◆ impaired ability to raise necessary capital
- ◆ workforce reductions.

The public version of the application, available to interested parties on request, contains the basis of the alleged dumping.

The goods covered by this notice are continuous computer paper (also known as listing forms or CPO) and has the following characteristics.

- ◆ Single part,
- ◆ printed and unprinted,
- ◆ punched (and in some cases perforated) on the vertical edges,
- ◆ perforated on the horizontal edges,

- ◆ in sizes
 - 11" x 15" (270mm x 381mm),
 - 11" x 9½" (279mm x 241mm),
 - A4 (297mm x 241mm)
- with a tolerance of ± ½" or 13 mm for all dimensions,
- ◆ in 60 or 70 gsm.

Continuous computer paper imported in reels is not covered by the application.

The goods are classified as follows:

TARIFF ITEM	STATISTICAL CODES	RATE OF DUTY
4802.52.00	70 or 78	5%
4808.90.10	45 or 46	5%
4823.51.00	02 or 35	5%
4823.59.00	26 or 27	5%

Prior to 1 July 1999, other statistical codes might have applied.

A notice under subsection 269TC(4) of the *Customs Act 1901* advising initiation of this investigation was published in the *Financial Review* on 6 April 2000. Interested parties are invited to provide written submissions in response to that notice.

The investigation period is 1 January 1999 to 31 December 1999. Customs will examine exports to Australia of the goods under consideration during that period to determine whether dumping has occurred.

In reaching its findings Customs must consider whether:

- (a) the export price of the goods that have already been exported to Australia is less than the normal value of those goods; and
- (b) the export price of the goods that may be exported to Australia in the future may be less than the normal value of the goods; and
- (c) because of that, material injury to the Australian industry producing like goods has been caused and is likely to continue.

Interested parties are advised to lodge submissions no later than the close of business on 16 May 2000. Parties located within Australia or Indonesia should address their submission to:

The Director
 Trade Measures, Operations 4
 Australian Customs Service
 Customs House
 5 Constitution Avenue

CANBERRA ACT 2601

Interested parties may be granted an extension of time for lodgement of a submission, provided the request is in writing and is reasonable and practical given the circumstances. Parties responding by 16 May 2000 will have an opportunity to lodge a supplementary submission in reply to matters raised by other parties. The due date for any supplementary submissions is 31 May 2000.

All interested parties wishing to participate in the investigation must ensure that submissions are lodged promptly. The legislation confers upon Customs the power to disregard submissions received after specified periods if there is insufficient time remaining for their proper consideration.

Submissions lodged in confidence must be clearly marked "confidential". In addition, two non-confidential copies of the submission must be provided.

Section 269ZJ of the *Customs Act 1901* requires that if a person claims information is confidential, or claims that publication of the information would adversely affect their business, that person:

- must provide a summary containing sufficient detail to allow a reasonable understanding of the substance of the information, or
- must satisfy the CEO of Customs that there is no way such a summary can be given to allow a reasonable understanding of the substance of the information.

The attention of interested parties is also drawn to the World Trade Organization Anti-Dumping Agreement, Article 6.5.2, which states:

If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

This provision is reflected in s. 269ZJ of the Customs Act.

Non-confidential submissions, and a copy of relevant correspondence between Customs and other persons, will be made available to interested parties through the public record. The public record may be examined at:

Trade Measures Branch
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

To access the public record, contact Mr Phil Hilyard on telephone number (02) 6275 6057.

The dates specified in this notice for lodging submissions must be observed to enable Customs to report to the minister within the legislative timeframe. A

preliminary affirmative determination may be made not less than 60 days from the date of initiation. Provisional measures may be imposed after the preliminary determination has been made.

A statement of essential facts will be placed on the public record by 25 July 2000 (or by such later date as the minister may allow in accordance with s. 269ZHI). The statement will set out the material findings of fact on which Customs intends to base its recommendation to the minister. That statement will invite interested parties to respond, within 20 days, to the issues raised therein.

Submissions received in response to the statement will be taken into account in compiling the report and recommendation to the minister. The report to the Minister is due within 45 days after the statement of essential facts is issued (ie 8 September 2000).

Enquiries about this notice may be directed to Mr Brian Henry on telephone (02) 6275 6016, facsimile (02) 6275 6990 or e-mail brian.henry@customs.gov.au. Customs dumping notices are available on the internet at <http://www.customs.gov.au/notices/index.htm>

(Paul O'Connor)
National Manager, Trade Measures
FOR CHIEF EXECUTIVE OFFICER
CANBERRA, ACT
6 April 2000