



**Trade Measures Branch**  
**Customs Act 1901 – Part XVB**

**TRADE MEASURES REPORT NO. 56**

**REVIEW OF DUMPING DUTIES**

**A4 RING BINDERS**

**EXPORTED FROM MALAYSIA**

**24 June 2002**

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## 1 SUMMARY

This report concerns a review of the level of the dumping duties payable on A4 insert ring binders exported from Malaysia to Australia. These duties took effect from 14 June 2001 following consideration by the Minister for Justice and Customs of Customs Trade Measures Report No. 39 on *Certain Ring Binders from Malaysia*.

After considering contemporary information about export prices of ring binders from Malaysia, the Minister concluded that it was appropriate to review the level of the dumping duties. Accordingly, at the request of the Minister, Customs initiated this review on 18 January 2002.

This review is only concerned with the level of the variable factors. The variable factors are the export price, normal value and the non-injurious price (NIP). Together, the variable factors determine the amount of dumping duty to be paid.

Pending the Minister's decision on the review, Customs also imposed securities under s.42(1) of the Customs Act on future imports of the goods under review. The securities apply to all imports of these goods that have been entered for home consumption from 18 January 2002.

Customs findings in this review confirm that the level of each of the variable factors has changed. Accordingly, this report recommends that the Minister sign a notice under s.269ZDB(1) of the *Customs Act 1901* to revise the variable factors. In effect, this will increase the amount of dumping duty to be paid on imports of these goods from 18 January 2002.

## 2 ABBREVIATIONS

ACCO	ACCO Australia Pty Ltd
ACDN	Australian Customs Dumping Notice
Act	<i>Customs Act 1901</i>
Asia File	Asia File Products Sdn Bhd
Bantex	Bantex Pty Ltd
Beautone	Beautone Specialties Australia Pty Ltd
CEO	Chief Executive Officer of Customs
Customs	Australian Customs Service
Customs Act	<i>Customs Act 1901</i>
FOB	Free on board
Minister	Minister responsible for Customs
NIP	Non-injurious price
Ring binders	Certain A4 insert ring binders
s.	Section; sub-section; paragraph or sub-paragraph
SEF	Statement of essential facts
Spicers	Spicers Paper Ltd
The goods	The goods the subject of the application
TMRO	Trade Measures Review Officer
WTO	World Trade Organization

## **3 BACKGROUND**

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

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

### **3.2 Initial investigation**

In October 2000, Customs received an application from the Australian industry for anti-dumping action against imports of insert ring binders from Malaysia. Following a preliminary assessment of the application, Customs considered there were reasonable grounds to warrant a formal investigation. During the course of the investigation, Customs undertook inquiries in Australia and Malaysia.

In its subsequent report to the Minister (Trade Measures Branch Report No. 39 of 11 May 2001), Customs concluded that exports of certain ring binders from Malaysia had been at dumped prices and that these imports had caused material injury to the Australian industry. The Minister accepted Customs' recommendations and interim dumping duty was imposed on certain insert ring binders exported from Malaysia to Australia from 14 June 2001.

### **3.3 Current review**

Under s.269ZA(3) of the Customs Act, the Minister may at any time, by notice in writing, request that the CEO initiate a review of anti-dumping measures because either:

- (i) *one or more of the variable factors relevant to the taking of the measures in relation to that exporter ..... may have changed;*  
*or*
- (ii) *if the measures had not been taken - the Minister would not be entitled to take any such measures.*

After considering contemporary information about export prices of ring binders from Malaysia, the Minister concluded that it was appropriate to review the variable factors. Accordingly, at the request of the Minister, Customs initiated this review on 18 January 2002.

Pending the Minister's decision on the review, Customs also imposed securities under s.42(1) of the Customs Act on future imports of the goods under review. The securities apply to all imports of these goods that have been entered for home consumption from 18 January 2002.

This review is only concerned with the level of the variable factors. The variable factors are the export price, normal value and the non-injurious price (NIP). Together, the variable factors determine the amount of interim dumping duty to be paid.

The investigation period for this review is from 14 June 2001 to 18 January 2002. Customs report findings and recommendations to the Minister on whether the variable factors should be altered are due on or before 24 June 2002.

The decision of the Minister will be published in the Gazette and a newspaper circulating in each state, the Australian Capital Territory and the Northern Territory.

### **3.4 Public notification**

Initiation of the review was advertised in the *Australian Financial Review* newspaper on 18 January 2002 and interested parties were invited to lodge submissions in response by 27 February 2002. Details of the review were also published in Australian Customs Dumping Notice (ACDN) 2002/03 of 18 January 2002. A copy of the ACDN is at Appendix 1.

A Statement of Essential Facts (SEF) setting out the facts on which Customs proposed to base its recommendations to the Minister was published on 8 May 2002. The purpose of the SEF was to provide interested parties with an opportunity to comment on the essential facts before the report is finalised. Only one submission (from Spicers) was received in response to the SEF.

Copies of the non-confidential version of the submission and Customs' visit reports as well as the SEF were placed on the Public File. The Public File is available for viewing and copying by all interested parties by contacting the Trade Measures Branch office management at Customs House, 5 Constitution Avenue, Canberra, ACT 2602, by telephone (02) 6275 6057 or via e-mail at [dumping@customs.gov.au](mailto:dumping@customs.gov.au)

The ACDNs, SEF and this report are also available on the internet at <http://www.customs.gov.au/notices/index.htm>

### **3.5 Goods under review**

The goods covered by this review are A4 insert ring binders manufactured from PVC coated paperboard and transparent PVC sheet and are fitted with a D-shaped ring mechanism. They are designed to accept hole-punched papers and other filed articles such as clear plastic pockets.

A transparent PVC sheet is fitted on the front cover, spine and rear of the file. It is open at the top to form a pocket. One or more of the inside covers may also be fitted with a transparent sheet that forms a pocket – either horizontal or vertical.

The ring binders exported to Australia from Malaysia have ring widths of 25 mm, 38mm or 50mm at the widest point. The binder mechanism has 2 rings, 3 rings or 4 rings which provides for nine different types of ring binder. For example, the ring binder with the description 2D25 has 2 'D' shaped rings that are 25 mm across the widest part of the 'D'. The ring binders are designed to accept A4 sized documents. Ring binders may come in a variety of colours but white is the predominant colour.

Ring binders are classified under sub-heading 4820.30.00 statistical code 18, in Schedule 3 to the *Customs Tariff Act 1995*. Imports from general rate sources are subject to a tariff duty of five per cent while those from developing countries are duty free.

## **4 EXPORT PRICES**

### **4.1 Previous assessment**

#### **4.1.1 Beautone**

During the initial investigation Customs found that the ring binders were exported to Australia by Asia File and were purchased from the exporter by Beautone. Customs established that the export sales to Beautone were not “arms length transactions” in terms of s.269TAA of the Customs Act. Where export sales are not “arms length transactions”, the export prices cannot be assessed on the basis of the invoiced price under s.269TAB(1)(a) of the Act.

Consideration was then given to assessing the export price under s.269TAB(1)(b) of the Act. Under this section, export prices are calculated from the price at which the goods are sold by the importer in Australia less the prescribed deductions to reflect the price at the FOB level.

Customs concluded at the time that the assessment of the export prices under s.269TAB(1)(b) of the Act would give an unreasonable result. However, for reasons that Beautone claimed were confidential, Customs was not able to further disclose the basis for its conclusion.

Export prices were consequently assessed under s.269TAB(1)(c). This section of the Act provides for the assessment of the export price having regard to all of the circumstances of the sale.

The assessed FOB export prices were based on Beautone’s selling prices in the Australian market less amounts for:

- selling, general and administrative expenses in respect of sales in Australia (from other verified but confidential sources);
- profit, if any, in respect of sales in Australia (from other verified but confidential sources);
- landing and into-store charges incurred by Beautone in Australia; and
- overseas freight and insurance charges incurred by Beautone.

#### **4.1.2 Spicers**

Similar to Beautone, Customs found that the ring binders were exported to Australia from Malaysia by Asia File and were purchased from the exporter by Spicers. Based on the evidence available, Customs was satisfied that the purchase of ring binders by Spicers from Asia File were arms length transactions in terms of section 269TAA of the Customs Act. Export prices were subsequently determined for Spicers under s.269TAB(1)(a) of the Act.

## **4.2 Current review**

### **4.2.1 Beautone**

Although Beautone made no submission to this review, Customs visited the importer and obtained information about its imports and sales of the goods under review. Customs noted that the ring binders continued to be exported from Malaysia by Asia File during the period of review. The binders were purchased from the exporter by the importer, Beautone.

While Beautone advised that it had recently ceased imports from Asia File, Customs continued the review to ensure that the effectiveness of the measures was maintained for the foreseeable future. Customs considered that such decisions by importers may be applicable in current circumstances, but that there remained the possibility of the exporter resuming sales to existing importers or selling to other importers over the expected remaining four year duration of the measures.

In examining the export prices, Customs found that the export sales by Asia File to Beautone during the period of review continued to be not arms length transactions. In these circumstances assessment of export prices under s.269TAB(1)(a) of the Act was not appropriate.

Customs visited the importer, Beautone, during the review to obtain and verify information relating to the transactions with the exporter. A comparable visit to Asia File, the exporter, was not possible because of that company's decision not to participate in the review. Customs considers that the inability to further check the details of the export transactions with the exporter is sufficient to preclude assessment of export prices under s.269TAB(1)(b) or s.269TAB(1)(c) of the Act.

Accordingly, on the basis of the evidence available, Customs will recommend to the Minister that export prices for Beautone be ascertained under s.269TAB(3) of the Act because sufficient information has not been furnished by the exporter to enable the export price to be ascertained under the preceding subsections. Customs has assessed the FOB export price for sales to Beautone using the selling price in the domestic market less deductions for selling and administrative expenses; landing and into-store charges as well as overseas freight and insurance.

### **4.2.2 Spicers**

Although Spicers made no initial submission to this review, the company responded to the SEF with a submission. In this, Spicers contended that the trading circumstances which resulted in the imposition of dumping duties had "completely altered" and that there were no reasonable grounds to continue the measures. However, the terms of this review are concerned only with the level of the variable factors. Customs therefore considers that the wider circumstances raised by Spicers' contention are not a matter for consideration in this context.

Customs undertook a visit to Spicers during the review to examine both trading arrangements and sales costs and revenue. The information obtained showed that Spicers continued to import ring binders from the exporter, Asia File, during the period of review.

Customs examined the costs and sales of ring binders by Spicers during the review period and concluded that the export transactions with Asia File were not arms length. Spicers expressed concern about the implications of this assessment of the relationship with Asia File. The company stated that its tactics to quit excess stock of the insert binders by selling them at low prices was independent of Asia File.

From the available evidence, Customs noted the price paid for the ring binders by Spicers; the on-costs incurred by Spicers in its domestic sales; and the likelihood that the full amounts of these expenses are not likely to be recovered by Spicers within a reasonable period of time. Under the legislation, the Minister may treat such sales as indicating that the importer (or an associate) will directly or indirectly receive a benefit in respect of all or part of the export price.

In a submission in response to the SEF, Spicers contended that the finding of “non arms length” in its trading arrangements with Asia File was erroneous. The company stated that it was seeking to have Asia File accede to a verification visit from Customs to clarify this aspect. However, no further advice was received from Spicers on this issue.

Notwithstanding the claims by Spicers, Customs recommends that the export transactions between Asia File and Spicers be treated as not being arms length in terms of s.269TAA(2) of the Act

Accordingly, in view of the non-arms length nature of the sales and the absence of a verification visit to Asia File, Customs recommends that export prices for Spicers be ascertained under s.269TAB(3) of the Act. Customs has assessed the FOB export price for sales to Spicers using the selling price in the domestic market less deductions for selling and administrative expenses; landing and into-store charges as well as overseas freight and insurance.

### **4.3 Conclusion**

Due to the widely divergent FOB export prices between Spicers and Beautone, Customs considers that any weight averaging of export prices would yield an unrealistic result. Such a methodology is also likely to undermine the effectiveness of the measures. Accordingly, Customs will recommend that the level of the revised export prices be assessed under s.269TAB(3) of the Act based on the data obtained from Beautone.

Details of the recommended export prices are at Confidential Appendix 2.

## **5 NORMAL VALUES**

### **5.1 Previous assessment**

During the initial dumping investigation, Customs found that the ring binders were exported from Malaysia by Asia File Products Sdn Bhd (Asia File) to two Australian importers – Beautone Specialities Australia Pty Ltd (Beautone) and Spicers Paper Ltd (Spicers). Asia File was described as a manufacturer of ring binders, lever arch files, clipboards, folders and other stationery products. The company was said to be producing mainly for export.

In Trade Measures Branch Report No 39, Customs stated that Asia File did not sell ring binders on the domestic market. Customs was advised by Asia File that it believed there were no other manufacturers of insert ring binders in Malaysia. However, during the investigation Customs found evidence of insert ring binders for sale in Malaysia bearing 'Made in Malaysia' labels. Nevertheless it was not possible for Customs to further investigate these goods in the time available.

Customs was therefore not able to assess normal values for Asia File using s.269TAC(1) of the Act. Instead, using information from the Asia File submission and that gathered and verified at the visit to Asia File, Customs established a normal value under s.269TAC(2)(c) of the Act. Under this section Customs used the Asia File costs to make and sell each of the nine models over the investigation period together with a profit margin based on domestic sales by Asia File of the goods in the same general category as ring binders. Adjustments were made in respect of credit terms and FOB charges in accordance with s.269TAC(9) of the Act.

### **5.2 Current review**

In the period of investigation for this review, Asia File continued to be the only significant exporter of the goods from Malaysia.

Asia File advised Customs in January 2002 that it declined to participate in this review because it no longer exported the goods to Australia. Notwithstanding this advice, Customs noted that Asia File exported A4 insert ring binders to Australia in March 2002 and that further shipments were anticipated by the importer concerned.

In the absence of any information from Asia File, Customs examined other available evidence on selling prices of A4 insert ring binders on the domestic market in Malaysia. This comprised a price list with an 'Asia File' logo showing insert ring binders for sale in Malaysia as well as a price quote for supply from another manufacturer of ring binders in Malaysia. Customs was advised that the 'Asia File' price list was based on free into store prices.

### **5.3 Conclusion**

In these circumstances, Customs considers that the prices for A4 insert ring binders shown in the 'Asia File' price list (being the exporter to Australia) are the appropriate basis for assessment of normal values under s.269TAC(6) of the Act. For the purposes of this review, Customs has equated the free into store domestic prices with the FOB point for export. Customs will recommend to the Minister that the normal values be ascertained on this basis under s.269TAC(6) of the Customs Act.

Details of the recommended normal values are at Confidential Appendix 3.

## 6 NON-INJURIOUS PRICES

Australia is a signatory to the World Trade Organization (WTO) Anti-Dumping Agreement which states that:

*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 the principle of this provision in s.8(5A) of the *Customs Tariff Anti-Dumping) Act 1975*. This 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 and countervailing duties are usually based on FOB prices in the country of export. Therefore a 'non-injurious price' (or NIP) is normally calculated in FOB terms for the country of export.

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

The usual method for calculating a NIP is to first determine an 'unsuppressed selling price' (USP for the goods in Australia – i.e. what the price would be in the absence of dumping. If this is not possible, Customs looks at the Australian industry's current cost to make and sell. To this is added an estimate of profit (if any) that would be achieved by the industry in a market not affected by dumping. In estimating this profit, Customs again looks to the market for guidance.

### 6.1 Previous assessment

From its investigations, Customs concluded that the second quarter of 2000 was the most recent period during which the selling prices of insert ring binders in Australia were unaffected by dumping. Customs also noted that there was a seasonal effect on prices for these goods due to the 'back to school' period and that this period should be taken into account by having regard to the most recent four quarters unaffected by dumping.

As a result, Customs determined the USP based on the selling prices of insert ring binders sold by the Australian industry over the period from 1 July 1999 to 30 June 2000 for each model.

To determine a NIP, Customs deducted from the USP the landing and into-store costs as well as the ocean freight and insurance incurred by Beautone. Customs also deducted the same amounts for importers' SG&A and profit as

used in determining the export prices. For each of the nine models of insert ring binder, the NIP was higher than the normal value.

## **6.2 Current review**

Although anti-dumping duties were imposed from 14 June 2001, Customs considers that the Australian market since then is not an appropriate basis for assessing a USP. As mid 2000 was the last period where the Australian market was considered not to be affected by dumped goods, Customs considers that this period is too dated for a contemporary assessment.

In these circumstances, Customs looked to a USP based on the costs to make and sell the goods in Australia plus an amount for profit. Customs examined the costs to make and sell insert ring binders for two of the Australian manufacturers – ACCO and Bantex – over the review period from 1 June 2001 to 31 January 2002. This period also aligned with the company accounting periods. Although Beautone commenced some local manufacture of the goods towards the end of the review period, there was only a limited production volume and data available.

Using the data based on the largest of the Australian manufacturers, Customs added an amount for profit (based on that company's overall profitability) to derive a USP for each of the ring binder models.

From the USP, Customs deducted the landing and into-store costs as well as the ocean freight and insurance incurred by Beautone. Customs also deducted the same amounts for importers' SG&A and profit as used in determining the export prices.

## **6.3 Conclusion**

Customs will recommend to the Minister that the NIP be ascertained using the USP for the Australian industry based on the costs to make and sell the goods in Australia plus an amount for profit less the costs incurred by an importer.

For each of the nine models of insert ring binder, the NIP was lower than the normal value. As a result and in accordance with s.8(5A) of the *Customs Tariff (Anti Dumping) Act 1975*, Customs will recommend to the Minister that the dumping duty be set at less than the full margin of dumping.

Details of the USP and the NIP are at Confidential Appendix 4.

## **7 CONCLUSION**

From the evidence available, Customs found that the variable factors (normal values, export prices and non-injurious prices) for exports to Australia of A4 ring binders from Malaysia have all changed from the previously ascertained levels.

Accordingly, Customs recommends that the levels of the variable factors be revised to reflect the latest available information. If accepted, this would increase the amount of interim dumping duty to be paid on future imports of these goods.

## 8 RECOMMENDATIONS

Customs recommends that the Minister

- **consider** this report and ,if agreed,
- **declare**, by public notice, under s.269ZDB of the Customs Act that the variable factors relevant to determining the interim dumping duty applying to A4 ring binders exported to Australia from Malaysia are to be amended.

To give effect to these recommendations, Customs recommends that the Minister sign the attached notice.

Customs also recommends that the Minister decide not to publish the Table attached to the notice because publication could adversely affect the business or commercial interest of interested parties.

**9 LIST OF APPENDICES**

Appendix 1	ACDN 2002/03
Confidential Appendix 2*	Recommended export prices
Confidential Appendix 3*	Recommended normal values
Confidential Appendix 4*	Recommended non-injurious prices

\*Commercial-in-Confidence data not included in the published report.

**10 ATTACHMENT**

Legal instrument recommended for the Minister's signature:

- a notice under sub-section 269ZDB(1) of the Customs Act declaring that different variable factors have been fixed for the original dumping duty notice concerning A4 insert ring binders exported from Malaysia.



## Appendix 1

### **Australian Customs Dumping Notice**

**No.2002/03**

CUSTOMS ACT 1901 - PART XVB

### **REVIEW OF DUMPING DUTY & IMPOSITION OF SECURITIES**

### **A4 RING BINDERS**

### **EXPORTED FROM MALAYSIA**

The Australian Customs Service has commenced a review of the dumping duty applying to A4 ring binders exported to Australia from Malaysia. A notice under subsection 269ZC(5) of the *Customs Act 1901* advising initiation of this review was published in the *Australian Financial Review* on 18 January 2002.

#### **The Goods**

The goods covered by this review are described as A4 ring binders with 2, 3 or 4 "D" shaped rings ranging in ring width from 25mm, 38mm or 50mm. They are manufactured from PVC coated paperboard and fitted with a D-shaped ring mechanism. The goods are classified under sub-heading 4820.30.00 statistical code 18, in Schedule 3 to the *Customs Tariff Act 1995*.

#### **Background to the Dumping Duty**

Following consideration of Customs Trade Measures Report No. 39 of 11 May 2001 on *Certain Ring Binders from Malaysia*, the Minister imposed dumping duty on imports of these goods in June 2001.

#### **The Current Review**

The Minister has requested that Customs undertake a review of the variable factors affecting the level of the dumping duty on imports of A4 ring binders from Malaysia. These factors are the export price, normal value and the non-injurious price.

The Minister considered recent information about export prices of these goods and decided to initiate a review under the provisions of s.269ZC(3) of the *Customs Act 1901*.

### **Procedures**

Interested parties wishing to participate in this review must ensure that their submissions are lodged promptly. Customs may disregard any submissions that are received after specified periods if there is insufficient time remaining for their proper consideration.

Interested parties should lodge submissions no later than **Wednesday 27 February 2002** with:

The Director  
Dumping Liaison, Trade Measures Branch  
Australian Customs Service  
Customs House  
5 Constitution Avenue  
CANBERRA ACT 2601;

or  
by fax on (02) 6275 6990.

### **Confidential Submissions**

Submissions provided 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
- 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 also reflected in s. 269ZJ of the *Customs Act 1901*.

## **Non-confidential Submissions Held On Public File**

Non-confidential submissions are held on the public file and will be made available to interested parties. Interested parties should contact office management during business hours on telephone no. (02) 6275 6057.

## **Statement of Essential Facts**

A Statement of Essential Facts (SEF) on which Customs proposes to base its recommendations to the Minister will be placed on the public file **by Wednesday 8 May 2002** (or at a later date if an extension has been granted by the Minister in accordance with s.269ZHI of the *Customs Act 1901*). The SEF will invite interested parties to respond to Customs draft findings within 20 days of it being placed on the public file.

## **Report to the Minister**

Submissions received in response to the SEF will be taken into account in compiling the report and recommendations to the Minister. This report is due **by Monday 24 June 2002**, or by such later date as the Minister may allow in accordance with s. 269ZHI of the *Customs Act 1901*.

## **Securities**

Pending the Minister's decision on the review, securities under s.42(1) of the *Customs Act 1901* have been imposed on imports of A4 ring binders from Malaysia. The securities apply to all such imports entered for home consumption from 18 January 2002. Details of the securities are available to *bona fide* importers from Customs regional offices.

## **Customs Contact**

Inquiries about the review should be directed to John Burke who may be contacted as follows:

telephone: (02) 6275 6493

fax: (02) 6275 6990

e-mail: [john.w.burke@customs.gov.au](mailto:john.w.burke@customs.gov.au)

(Sue Pitman)  
National Manager, Trade Measures  
FOR CHIEF EXECUTIVE OFFICER  
CANBERRA, ACT  
18 January 2002