



Consideration report number: 341

Application for a dumping duty notice & countervailing duty notice

Submitted by Paper Australia Pty Ltd

In relation to A4 Copy Paper exported to Australia from the Federative Republic of Brazil, the People's Republic of China, the Republic of Indonesia and the Kingdom of Thailand

29 March 2016

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Abbreviations

Abbreviation / short form	Full reference
ACBPS	Australian Customs and Border Protection Service
the applicant	Paper Australia Pty Ltd
AUD	Australian Dollar
Australian Paper	Paper Australia Pty Ltd
Brazil	the Federative Republic of Brazil
China	the People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Customs Act	<i>Customs Act 1901</i>
DIBP	Department of Immigration and Border Protection
Indonesia	the Republic of Indonesia
the goods	the goods the subject of the application (also referred to as the goods under consideration)
Parliamentary Secretary	the Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
Thailand	the Kingdom of Thailand

1. Findings and recommendations

This report provides the result of the consideration by the Anti-Dumping Commission (the Commission) of an application under subsection 269TB(1)¹ of the *Customs Act 1901* (Customs Act) by Paper Australia Pty Ltd (Australian Paper) for the publication of a dumping and/or countervailing duty notice in respect of A4 copy paper that have been imported into Australia from the Federative Republic of Brazil (Brazil), the People's Republic of China (China), the Republic of Indonesia (Indonesia) and the Kingdom of Thailand (Thailand).

Australian Paper alleges that the Australian industry for A4 copy paper has suffered material injury caused by A4 copy paper exported to Australia from Brazil, China, Indonesia and Thailand at dumped and/or subsidised prices.

The legislative framework that underpins the making of an application and the Commission's consideration of an application is contained in Divisions 1 and 2 of Part XVB of the Customs Act. The relevant legislative provisions are set out in **Non-Confidential Appendix 1**.

1.1. Findings

In accordance with subsection 269TC(1), the Commission has examined the application and is satisfied that:

- the application complies with the requirements of subsection 269TB(4) (as set out in section 2.3 of this report)
- there is an Australian industry in respect of like goods (as set out in section 2.2 of this report)
- there appear to be reasonable grounds for the publication of a dumping and/or countervailing duty notices in respect of the goods the subject of the application (as set out in sections 3, 4, 5 and 6 of this report).

1.2. Recommendations

Based on the above findings, the Commission recommends that the Commissioner of the Anti-Dumping Commission (Commissioner) decide not to reject the application and initiate an investigation to determine whether a dumping duty notice and/or countervailing duty notice should be published.

The Commission further recommends that:

- exports to Australia during the investigation period 1 January 2015 to 31 December 2015 be examined for dumping and/or subsidisation, and
- details of the Australian market from 1 January 2012 be examined for injury analysis purposes.

If the Commissioner agrees with these recommendations, the Commissioner must give public notice of the decision (**Non-Confidential Attachment 1**) in accordance with the requirements set out in subsection 269TC(4).

¹ All legislative references in this report are to the *Customs Act 1901* unless otherwise specified.

2. The application and the Australian industry

2.1. Lodgement of the application

2.1.1. Legislative framework

The procedures for lodging an application are set out in section 269TB. The procedures and timeframes for the Commissioner's consideration of the application are set out in section 269TC.

2.1.2. The Commissioner's timeframe

Event	Date	Details
Application lodged & received by the Commissioner under subsections 269TB(1) and (5)	24 February 2016	The Commission received an application from Australian Paper which alleges that the Australian industry has suffered material injury caused by A4 copy paper that has been imported into Australia from Brazil, China, Indonesia and Thailand at dumped and/or subsidised prices.
	25 February 2016	The applicant provided further information and data in support of its application without having been requested to do so (as provided in subsection 269TC(2A)). This provision of further information restarted the 20 day period for consideration of the application and the application was taken to have been lodged and received from the date this information was provided.
	4 March 2016	The Commission notified Australian Paper that the application contained critical and important deficiencies, which if left unaddressed, created doubt on the reasonableness of the grounds for the publication of dumping duty notice.
Applicant provided further information in support of the application under subsection 269TC(2A)	8 March 2016	The applicant provided further information and data in support of its application without having been requested to do so (as provided in subsection 269TC(2A)). This provision of further information and data restarted the revised 20 day period for consideration of the application and the application was taken to have been lodged and received from the date this information was provided.
Consideration decision due under section 269TC(1)	29 March 2016 (taking account of Easter Monday public holiday)	The Commissioner shall decide whether to reject or not reject the application within 20 days after the applicant provided further information.

2.2. Compliance with subsection 269TB(4)

2.2.1. Finding

Based on the information submitted by the applicant, the Commission considers that the application complies with subsection 269TB(4).

2.2.2. Legislative framework

Subsection 269TC(1) requires that the Commissioner reject an application for a dumping duty notice and a countervailing duty notice if, among other things, the Commissioner is not satisfied that the application complies with subsection 269TB(4).

2.2.3. The Commission's assessment

The table below summarises the Commission's assessment of compliance with subsection 269TB(4).

Requirement for the application	Details
Lodged in writing under subsection 269TB(4)(a)	The applicant lodged in writing confidential and non-confidential versions of the application. The non-confidential version of the application can be found on the electronic public record on the Commission's website at www.adcommission.gov.au .
Lodged in an approved form under subsection 269TB(4)(b)	The application is in the approved form (B108) for the purpose of making an application under subsection 269TB(1).
Contains such information as the form requires under subsection 269TB(4)(c)	The applicant provided: <ul style="list-style-type: none">• a completed declaration;• answers to all questions that were required to be answered by the applicant;• completed all appendices; and• sufficient detail in the non-confidential version of the application to enable a reasonable understanding of the substance of the information submitted in confidence.
Signed in the manner indicated in the form under subsection 269TB(4)(d)	The application was signed in the manner indicated in Form B108 by a representative of the applicant.

Requirement for the application	Details
Supported by a sufficient part of the Australian industry under subsection 269TB(4)(e) and determined in accordance with subsection 269TB(6)	<p>As set out in section 2.4.1 the Commission is satisfied that there is an Australian industry producing like goods.</p> <p>Australian Paper has provided information concerning its own A4 copy paper production and stated that since mid-2010 there have been no other Australian producers of the product. Therefore, the Commission is satisfied that:</p> <ul style="list-style-type: none"> • the application has support from more than 25% of the total production in Australia given that Australian Paper itself makes up more than 25% of the total production in Australia; and • more than 50% of Australian industry (measured by production) who have expressed opposition to or support for the application support the application given that Australian Paper is the only member of the Australian industry.
Lodged in the manner approved under section 269SMS for the purposes subsection 269TB(4)(f)	The application was lodged in a manner approved in the Commissioner's instrument made under section 269SMS, being by hard copy to the Commission's address provided in that instrument. The application was therefore lodged in a manner approved under subsection 269SMS(2).

2.3. The goods the subject of the application

The table below outlines the goods as described in the application and their corresponding tariff classification.

Full description of the goods, as subject of the application
Uncoated white paper of a type used for writing, printing or other graphic purposes, in the nominal basis weight range of 70 to 100 gsm and cut to sheets of metric size A4 (210mm x 297mm) (also commonly referred to as cut sheet paper, copy paper, office paper or laser paper).
Further information
The paper is not coated, watermarked or embossed and is subjectively white. It is made mainly from bleached chemical pulp and/or from pulp obtained by a mechanical or chemi-mechanical process and/or from recycled pulp.

Tariff classification (<i>Schedule 3 of the Customs Tariff Act 1995</i>)				
Tariff code	Statistical code	Unit	Description	Duty rate
4802.56.10	03	gsm	A4 paper 40-89 gsm white	Brazil – 5% Indonesia and Thailand – zero China – 3% Note: From 20 December 2015, the rate of duty applicable to imports from China reduced to 4%. From 1 January 2016, the rate declined further to 3%. Prior to 20 December 2015, the applicable rate of duty for imports from China was 5%.
Previous investigations				
<p>Dumping investigation ADC 225 - A3 and A4 Copy paper exported from China was initiated on 10 October 2013, covering the investigation period of 1 July 2012 to 30 June 2013 with an injury examination period from 1 January 2012. The goods which were the subject of that investigation had the same description as in this application from Australian Paper, but also included A3 size paper. The investigation was subsequently terminated on 7 August 2014 (refer ADN 2014/69). No dumping was found against four exporters. Dumping was found, but the dumping margin was negligible in relation to a further two exporters. The total remaining volume of goods that had been, or may have been, dumped from China was negligible.</p> <p>Refer to Non-Confidential Attachment 2 for a chronological listing of previous investigations</p> <p>Prior to 1998, some 9 separate reports were made to the Minister regarding copy paper. Measures were imposed against Finland on 22/01/1999 [REP 04], continued against Germany and South Africa but not Brazil on 15/01/1999 [REP 03]</p>				

Other administrations

US

On 16 January 2016, the US Department of Commerce (“USDOC”) published final determination findings concerning certain uncoated paper (i.e. like goods to A4 copy paper) exported from Australia, Brazil, China, Indonesia and Portugal. The final dumping margins were:

China [A-570-023] – 84.05 per cent to 149 per cent

Indonesia [A-560-828] – 2.05 per cent to 17.39 per cent

Brazil [A-351-842] – 22.16 per cent to 41.39 per cent

Portugal [A-471-807] – 7.8 per cent

Australia [A-602-807]– 138.87 per cent to 222.46 percent for Paper Australia Pty Ltd

The final countervailing margins were:

China [C-570-023] – 7.23 per cent to 176.75 per cent; and

Indonesia [C-560-829] – 21.22 per cent to 109.15 per cent.

Note: See **Non-Confidential Attachment 3** for a comparison of recent outcomes between US and Australian jurisdictions

Note: See **Non-Confidential Attachment 4** for a list of the countervailable subsidies that were considered in the US case.

2.4. Like goods and the Australian industry

The Commission is satisfied that there is an Australian industry producing like goods to the goods the subject of the application on the basis that:

- Australian Paper produces goods that have characteristics that closely resemble the goods the subject of the application, and
- the goods produced by Australian Paper are wholly produced in Australia.

2.4.1. Legislative framework

Subsection 269TC(1) requires that the Commissioner reject an application for a dumping and countervailing duty notice if, among other things, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

Like goods are defined under subsection 269T(1). Subsections 269T(2), 269T(3), 269T(4), and 269T(4A) are used to determine whether the like goods are produced in Australia and whether there is an Australian industry.

2.4.2. Locally produced like goods

The table below summarises the Commission’s assessment of whether the locally produced goods are identical to, or closely resemble, the goods the subject of the application and are therefore like goods.

Factor	The Applicant's claims	The Commission's assessment
Physical likeness	Australian Paper claims that the goods produced by the Australian industry are physically alike in all practical aspects.	<p>In Investigation 225 the Commission found both the imported goods and the goods produced by the Australian industry are physically alike in all practical aspects being white paper cut in rectangular sheets and generally wrapped in reams of 500 sheets, but also sold in packs containing different numbers of sheets. Both are what the Australian consumer would recognise as white copy paper. Unless placed side by side, the average consumer would be unlikely to notice any difference between them.</p> <p>Even though Investigation 225 was in relation to China, the Commission considers the finding applies equally to copy paper from the other countries as the goods exported from those countries are physically alike.</p>
Commercial likeness	Australian Paper claims that there is a commercial likeness of the goods as they compete in the same market.	<p>In Investigation 225 the Commission found that the goods were commercially similar as they competed in the same market. There is direct head-to-head competition between imported goods and the goods produced by the Australian industry for goods wrapped and sold as the purchaser's own brand e.g. Fuji Xerox and 'plain wrap' and generic products. The customers that purchased imported A4 copy paper also purchased A4 copy paper from Australian Paper.</p> <p>Based on the finding in Investigation 225 the Commission considers them to be commercially like.</p>

Factor	The Applicant's claims	The Commission's assessment
Functional likeness	Australian Paper claims that the goods are functionally similar as they are both used for the same purposes.	In Investigation 225 the Commission found that the imported and locally produced A4 copy paper were functionally alike in all aspects as they had the same end use, including high speed and low speed copying, printing and general use in business, education and home offices as well as in small offset printers. Even though Investigation 225 only concerned exports from China, the Commission considers the finding applies equally to copy paper exported from the other countries.
Production likeness	Australian Paper claims that the goods are manufactured using similar production processes.	In investigation 225, the Commission found that the paper production and finishing processes are substantially identical across the large scale industry. Some mills, such as UPM-Kymmene China, use paper pulp purchased from bleached pulp mills located elsewhere while others, such as Australian Paper, have their own bleached pulp mills on site. The imported goods and the goods produced by the Australian industry appear to be manufactured using equipment and processes which are alike in all significant practical aspects. This includes the way in which the paper is formed, drained and pressed before ultimately being cut to the correct diameter.
Commission's assessment		
<p>The Commission's assessment is that while the locally produced goods are not identical to the goods the subject of the application, the locally produced goods closely resemble the goods the subject of the application and are like goods given that the primary physical characteristics of imported and locally produced goods are similar, the imported and locally produced goods are commercially alike as they are sold to common end users, the imported and locally produced goods are functionally alike as they have the same end-uses and the imported and locally produced goods are manufactured in a similar manner.</p> <p>This is consistent with the finding in Investigation 225.</p>		

2.4.3. Manufacture in Australia

The table below summarises the Commission's assessment of whether the goods are wholly manufactured in Australia and whether the like goods are therefore considered to have been manufactured in Australia.

The Applicant's claims
<p>Australian Paper claims that the entire manufacturing process from wood to wrapped, boxed and palletised cut sheet paper takes place in Australia (at its Maryvale mill in Gippsland, Victoria).</p> <p>The major raw material used in papermaking is wood pulp, including recycled wood pulp. The majority of wood pulp used is produced on site at Maryvale and this is supplemented by up to 10% imported pulps. The other two key materials used are Calcite and Starch, which for Australian Paper are both produced and supplied from within Australia.</p> <p>Australian Paper's production process is provided at Non-Confidential Attachment 5 and conforms to the papermaking process in all printing and writing paper mills.</p>
The Commission's assessment
<p>Noting the above, the Commission considers that at least one substantial process of manufacture is carried out in Australia and considers the like goods to have been manufactured in Australia.</p>

2.5. Australian industry information

The table below summarises the Commission's assessment of whether Australian Paper has provided sufficient information in the application to analyse the performance of the Australian industry.

Have the relevant appendices to the application been completed?		
A1	Australian production	Yes
A2	Australian market	Yes
A3	Sales turnover	Yes
A4	Domestic sales	Yes
A5	Sales of other production	Not applicable
A6.1	Cost to make and sell (& profit) – Domestic sales	Yes
A6.2	Cost to make and sell (& profit) – Export sales	Yes
A7	Other injury factors	Yes
General administration and accounting information – Australian Paper		
History	Australian paper was founded in 1895. The Maryvale mill, located in the Gippsland region of Victoria was built in 1937	
Ownership	Australian Paper is an Australian Proprietary Company, limited by shares, and registered with the Australian Securities and Investments Commission (ASIC).The company is a wholly owned subsidiary of Nippon Paper Industries Co Ltd.	
Operations	Australian Paper's Australian operations comprise a number of business units, each with its own capability, spanning manufacturing, production and printing. Australian Paper's head office is located in Melbourne, Victoria. Products produced include envelopes and stationery, cut sheet paper, printing and converting papers, and packaging and industrial papers.	
Financial year	January-December financial year since 2009.	
Audited accounts	Unaudited report for the half year to June 2015 is provided as Confidential Attachment A-2.9.2 to the application.	
Annual reports	A copy of the 2014 annual report is included at Confidential Attachment A-2.9.1 to the application.	

Production and sales information	Cost to make and sell information	Other injury factors
The Commission has no significant concerns regarding the production and sales information provided.	The Commission has no significant concerns regarding the cost data provided.	The Commission has no significant concerns regarding the data provided in Appendix A7 to the application.
The Commission's assessment		
Based on the information in the application, the Commission is satisfied that there is sufficient data on which to analyse the performance of the Australian industry between January 2012 and December 2015.		

2.5.1. Market size

Australian Paper estimated the size of the Australian market using:

- Australian Bureau of Statistics import data for the applicable tariff code;
- TradeData International (TradeData)² information; and
- Australian Paper's own sales data and knowledge of the market.

Australian Paper completed Confidential Appendix A2 to the application, using the data obtained to estimate the size of the Australian market. Data gathered by Australian Paper is set out below in Figure 1 for the period January 2012 to December 2015.

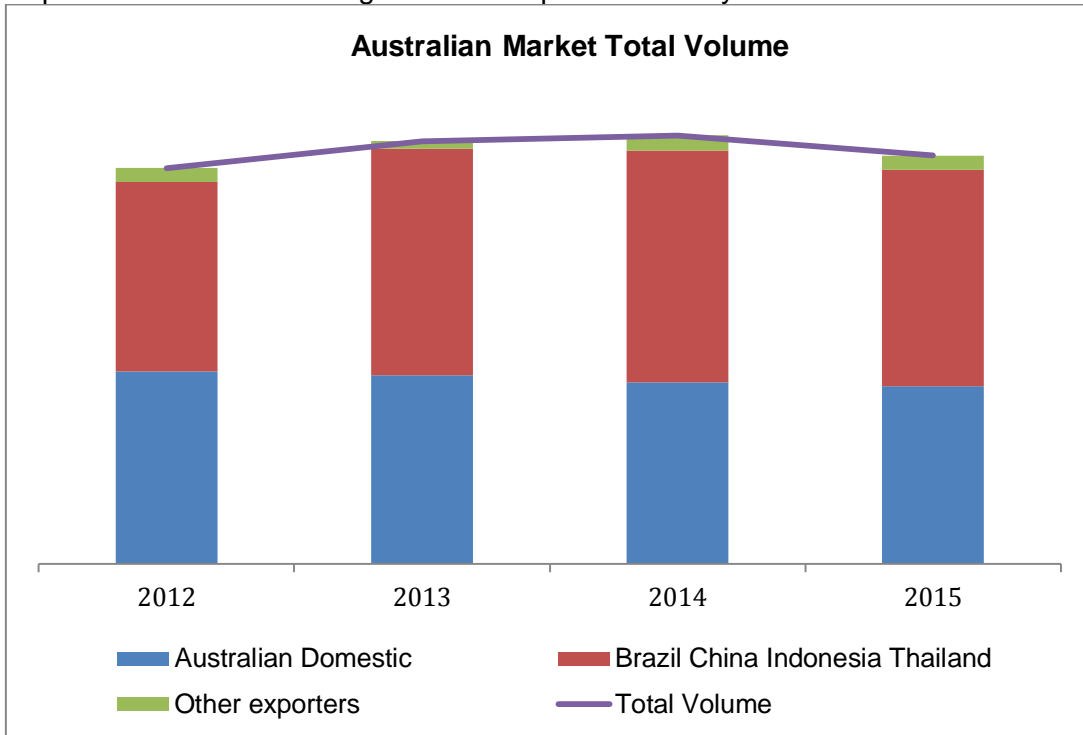


Figure 1: Total Australian Market Volume of A4 copy paper

² TradeData provides global trade information to manufacturers and other similar companies. This includes product classification codes, trade data, market details and similar trade information.

Australian Paper has observed that the Australian market for the goods under consideration is recognised as a 'mature' market and is not prone to seasonal volume fluctuations, nor is the underlying end user volume very sensitive to changes in economic factors; being underpinned by the number of Australians in full time office-based employment. Volume growth is forecast to remain generally flat on an annualised basis.

Figure 1 demonstrates that in a fairly stable market, Australian Paper's sales volumes have decreased since 2012 and the volume of alleged dumped imports has increased in proportion over the same time period, capturing the slight growth in total volume in 2013 and 2014. Notably, an increase in import volumes of A4 cut paper occurs in 2013 with Australian domestic volumes declining in 2014 and only slightly increasing in 2015 in line with an overall reduction in total market volume. Imports from "other" countries have been relatively stable over the four-year period since 2012.

Australian Paper's market share in 2012 was just under half of the market. As imports from Brazil, China, Indonesia and Thailand increased in the following years (particularly in 2013), the Australian industry's market share declined and imports of A4 cut paper from Brazil, China, Indonesia and Thailand have increased commensurately. It appears that the imports from the nominated countries have displaced Australian industry sales of like goods. With the declining domestic market share was a steady increase in exports by Australian Paper in proportion to total production capacity, Appendix A5 of the application refers, further confirming the impact of increased import activity within the domestic market.

The Commission's assessment of the Australian market for A4 copy paper is attached at **Confidential Attachment 6**.

3. Reasonable Grounds – dumping

3.1. Findings

Pursuant to subsection 269TC(1)(c), the Commission considers that there appear to be reasonable grounds to support the claims that:

- the goods have been exported to Australia from Brazil, China, Indonesia and Thailand at dumped prices
the estimated dumping margin for exports from Brazil, China, Indonesia and Thailand are greater than 2% and therefore are not negligible, and
- the estimated volume of goods Brazil, China, Indonesia and Thailand that appear to have been dumped are each greater than 3% of the total Australian import volume of goods and therefore are not negligible.

3.2. Legislative framework

Subsection 269TC(1) requires that the Commissioner reject an application for a dumping duty notice if, among other things, the Commissioner is not satisfied that there appear to be reasonable grounds for the publication of a dumping duty notice.

Under section 269TG, one of the matters that the Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary)³ must be satisfied of in order to publish a dumping duty notice is that the export price of goods that have been exported to Australia is less than the normal value of those goods, i.e. that dumping has taken place (to an extent that is not negligible). This issue is considered in the following sections.

3.3. Export price

3.3.1. Legislative framework

Export price is determined by applying the requirements in section 269TAB taking into account whether the purchase or sale of goods was an arms length transaction under section 269TAA.

3.3.2. The Applicant's estimate

The table below summarises the approach taken by the applicant to estimate export prices and the evidence relied upon.

³ On 20 September 2015, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Science.

Country	Basis of estimate	Details
Brazil, China, Indonesia & Thailand	<p>The price determined having regard to all the circumstances of the exportation – subsection 269TAB(1)(c).</p> <p>The Applicant has utilised ABS (Australian Bureau of Statistics) import data for export price. Information was obtained for both China and Indonesia.</p> <p>However, no information was available for Brazil (from 2010 onwards) and for Thailand from 2014 onwards).</p> <p>For this reason, the Applicant has utilised export data sourced from TradeData as the basis of export price for both Brazil and Thailand.</p>	<p>The applicant considers that the published ABS import data (and applicable TradeData export data) accurately reflects the declared free on board (FOB) prices for the exported goods.</p> <p>The Applicant believes that ‘off-invoice’ rebates provided to importers by manufacturers or exporters have not been included in the declared export prices, and can be 10% or more of the invoice value.</p>

3.3.3. The Commission's assessment

The Commission examined the calculations and supporting evidence provided by Australian Paper. To verify the reliability of the export price calculated by Australian Paper, the Commission compared the export price calculated by Australian Paper to export prices from DIBP data.

After removing entries that appear to be entered incorrectly, the Commission identified only a small variance between the applicant’s estimated average FOB export price and the DIBP data weighted average FOB export price for imports of A4 copy paper from, Indonesia and Thailand. The Commission does not consider that the variance is material. There was a greater variance between the applicant’s estimated export price and the DIBP data weighted average FOB export price for imports of A4 copy paper from Brazil and China. This variance will be addressed during the investigation stage.

The Commission accepts that an applicant can only provide information in its application that is reasonably available to it. Accordingly, the Commission considers that Australian Paper’s use of the methodology outlined above to estimate the export prices of A4 copy paper exported from Brazil, China, Indonesia and Thailand is reasonable for the purposes of the application.

The Commission considers that Australian Paper’s sources of information are broadly reasonable and contemporaneous.

The Australian industry’s calculation of export price and the Commission’s comparison are contained in **Confidential Attachment 7**.

3.4. Normal value

3.4.1. Legislative framework

Normal value is determined by applying the requirements in section 269TAC taking into account whether:

- the purchase or sale of the goods was an arms length transaction under section 269TAA;
- the goods were sold in the ordinary course of trade under section 269TAAD;
- there has been an absence or low volume of sales of like goods in the country of export; and
- whether the situation in the market of the country of export is such that sales in that country are not suitable for determining normal value under subsection 269TAC(1).

3.4.2. The Applicant's estimate

The table below summarises the approach taken by the applicant to estimate normal values and the evidence relied upon.

Country	Basis of estimate	Details
Brazil	Domestic price list subsection 269 TAC(1)	The applicant obtained pricing for A4 copy paper sold domestically in Brazil on a monthly basis in 2015. The domestic prices were sourced from RISI, a respected paper industry publication that monitors paper pricing globally. Prices do not include taxes or rebates.

Country	Basis of estimate	Details
China	<p>Constructed normal value under subsection 269TAC(2)(c)</p> <p>The Applicant considers that normal values for China cannot be determined under subsection 269TAC(1) as a market situation exists.</p> <p>Refer to discussion below regarding market situation.</p>	<p>The Applicant stated that it did not have access to the production costs for Chinese A4 copy paper and has therefore relied on the cost model for uncoated production paper used by the US applicant industry in the certain uncoated paper case that was based on a constructed cost methodology (for the 2014 year).</p> <p>The Applicant has relied upon Indonesian production cost inputs (where available) and/or market prices. Although the Applicant has alleged a market situation exists in Indonesia, this is specifically in relation to the price of timber. The cost of woodchips for the purposes of normal value calculations has been based on a world price.</p> <p><u>Cost to make</u></p> <ul style="list-style-type: none"> • Raw materials (woodchips, chemicals etc); • Paper making labour • Energy & other utilities <p><u>Selling, general & administrative expenses</u></p> <ul style="list-style-type: none"> • SG&A expenses, packaging costs • Depreciation <p><u>Profit</u></p> <ul style="list-style-type: none"> • Based on industry knowledge <p>The depreciation, SG&A expenses and profit component are based on the financial statements of a Chinese producer of A4 copy paper from the 2015 income year.</p> <p>Note that there is a discrepancy between the cost to make and sell data provided on page 53 of the application, and the figures utilised in Confidential Attachment B-6 to the application relating to dumping margins. The Applicant has explained this discrepancy as owing to a monthly conversion rate being utilised to convert USD to AUD.</p>

Country	Basis of estimate	Details
Indonesia	<p>Constructed normal value under subsection 269TAC(2)(c)</p> <p>Applicant considers that normal values for Indonesia cannot be determined under subsection 269TAC(1) as a market situation exists.</p> <p>Refer to discussion below regarding market situation.</p>	<p>The Applicant states that it did not have access to the Indonesian producers' costs for production of A4 copy paper and has therefore relied on the cost model used by the US applicant industry in the certain uncoated paper case that was based on a constructed cost methodology.</p> <p><u>Cost to make</u></p> <ul style="list-style-type: none"> • Raw materials & labour • Energy & other utilities • Paper making process <p><u>Selling, general & administrative expenses</u></p> <ul style="list-style-type: none"> • SG&A expenses, packaging costs • Depreciation <p><u>Profit</u></p> <ul style="list-style-type: none"> • Based on industry knowledge <p>The depreciation, SG&A expenses and profit component are based on the financial statements of an Indonesian producer of A4 copy paper from the 2014 income year (this is incorrectly referred to as the 2013 income year in the application).</p>
Thailand	<p>Subsection 269TAC(1) Market survey</p>	<p>Australian Paper commissioned a market survey of A4 copy paper selling prices in Thailand. Two brands of paper were monitored over the period and prices were then extrapolated from baht/ream to AUD/tonne. The survey noted that there was a 1.25% increase in the domestic selling prices from August 2014 to September 2015 and the Applicant has used the midpoint between the two brands of paper as the normal value.</p> <p>The price does not include tax.</p>

Market Situation

In relation to both China and Indonesia, the Applicant claimed that a market situation was present and that as a result, domestic prices of A4 copy paper were not suitable for determining normal values under subsection 269TAC(1) of the Act. These claims will now be considered.

China

Australian Paper claims that there is a situation in the Chinese A4 copy paper market that renders domestic sales unsuitable for determining normal value under subsection 269TAC(1) (i.e. that a 'market situation' exists – see subparagraph 269TAC(2)(a)(ii)), and therefore constructed normal values should be used instead for determining whether A4 copy paper exported from China is sold at dumped prices (see subparagraph 269TAC(2)(c)(ii)).

In its application, Australian Paper submits that the domestic selling prices for A4 copy paper sold in China are artificially low as the Government of China (GOC) has imposed policies and measures that “*have materially distorted raw material input costs (including pulp and chemicals)*”.⁴

The application details the importance of the pulp and paper industry to China and how the GOC has sought to control and manage development of the industry via a five-year plan. Australian Paper contends that the GOC has and continues to influence the prices of the raw material inputs in the Chinese A4 copy paper market through various forms of interventions, and make reference to a number of programs that were established as being countervailing in the US countervailing duty investigation into uncoated woodfree paper exported from China.⁵

More specifically, Australian Paper claims it has identified subsidy programs which specific producers from China have benefited from. These programs broadly relate to the following:

- Preferential tax treatment;
- Raw materials at lower than market cost;
- GOC grants for both construction and operation of paper mills; and
- Preferential loan treatment.

Accordingly, Australian Paper submits that “*it can be concluded that a ‘Market Situation’ for A4 copy paper in China exists and the domestic selling prices of the exporters of the goods to Australia are not suitable for use in determining normal values ...*”.⁶

Indonesia

Australian Paper claims that there is a situation in the Indonesian A4 copy paper market that renders domestic sales unsuitable for determining normal value under subsection 269TAC(1) (i.e. that a ‘market situation’ exists – see subparagraph 269TAC(2)(a)(ii)), and therefore constructed normal values should be used instead for determining whether A4 copy paper exported from Indonesia is sold at dumped prices (see subparagraph 269TAC(2)(c)(ii)).

In its application, Australian Paper submits that the domestic selling prices for A4 copy paper sold in Indonesia are not suitable for determining normal values under subsection 269TAC(1) as “*the prices are significantly influenced and distorted by the Government of Indonesia’s (GOI’s) influence on raw material inputs and subsidies ...*”.⁷

The application details how the GOI has declared the pulp and paper industry in Indonesia as one of the priority industries in its National Industry Policy. Australian Paper contends that the GOI have provided pulp and paper producers with subsidies including the following:

- Provision of timber at less than market rate;
- Benefits under the GOI’s ban on export of logs; and

⁴ Australian Paper’s non-confidential application, page 45, refers.

⁵ Australian Paper’s non-confidential application, page 47, refers.

⁶ Australian Paper’s non-confidential application, page 48, refers.

⁷ Ibid.

- Debt forgiveness including the buy-back of debt by the GOI.

Australian Paper has also referred to several subsidy programs that were confirmed to exist in the US countervailing duty investigation into uncoated woodfree paper exported from Indonesia.

Accordingly, Australian Paper submits that *“the raw material input prices for pulp manufacture in Indonesia are lower than they otherwise would be in the absence of the identified GOI programs.”*⁸ For this reason, normal values have been determined on a constructed cost methodology.

The normal values calculated by the Applicant at FOB in AUD per tonne are shown in the table below:

Country	2015 Normal Value (AUD/tonne)
Brazil	\$1,235.77
China	\$1,408.17
Indonesia	\$1,735.65
Thailand	\$1,234.16

**AUD/tonne constructed FOB normal values for A4 copy paper from
Brazil, China, Indonesia and Thailand**

3.4.3. The Commission's assessment

The calculations and supporting evidence provided by Australian Paper were examined by the Commission. In relation to both Brazil and Thailand, the Commission is of the view that the Applicant's sources of information are reasonable and contemporaneous.

In relation to both China and Indonesia, the Commission observes that Australian Paper has referred to the existence of a market situation in each country. Australian Paper has outlined several countervailable subsidy programs, including references to previous investigation findings on the existence of a market situation as well as the outcome of the US countervailing duty investigation into uncoated woodfree paper. The application outlines these programs, provides evidence in support of their existence and outlines how these programs may impact on the domestic selling prices of A4 copy paper in both China and Indonesia.

Further, the Commission analysed costs from a previous investigation into copy paper in the 2013 year. The normal value utilising CTMS for this Chinese exporter of copy paper from the 2013 financial year is slightly lower than that outlined by Australian Paper for China during the investigation period. However, the Commission notes that using the 2013 cost information and DIBP data to calculate export price still finds dumping is present.

Based on an assessment of the information in the application and the references provided, the Commission considers that it is appropriate to assess Australian Paper's claims during the course of the investigation. The Commission will seek relevant information from exporters and both the GOC and the GOI in order to assess Australian Paper's claims thoroughly and objectively.

⁸ Australian Paper's non-confidential application, page 49, refers.

The Australian industry's estimation of normal value and the Commission's assessment are contained in **Confidential Attachment 8**.

3.5. Dumping margins

3.5.1. Legislative framework

Dumping margins are determined in accordance with the requirements of section 269TACB.

Dumping margins and dumping volumes cannot be negligible, otherwise the investigation is terminated. Whether the dumping margins and dumping volumes are negligible is assessed under section 269TDA.

3.5.2. The Commission's assessment

The table below summarises the dumping margins estimated by the applicant and dumping margins calculated by the Commission based on revised estimates of export prices. Dumping margins are expressed as a percentage of the export price.

Country	The Applicant's estimate	The Commission's estimate
Brazil	18.89%	46.97%
China	20.26%	50.10%
Indonesia	63.65%	72.72%
Thailand	15.85%	15.35%

Assessed at the levels shown, the dumping margins are not negligible.

Based on the information in the application, the imports of A4 copy paper from each of the countries named in the application represented more than 3% of the total volume of A4 copy paper imported during the investigation period. However, after considering DIBP import data, the Commission determined the import volume for Brazil to be below the 3% threshold.

This would ordinarily be determined to be negligible under subsection 269TDA(4). However, the applicant has provided information from TradeData identifying that the import volume from Brazil was clearly above 3%. The Commission has analysed this data and considers it reasonable. The applicant also provided evidence showing that A4 copy paper clearly marked "Made in Brazil" was available for sale in Australia. Further analysis regarding the veracity of this data will be undertaken during the investigation phase.

The Commission tested Australian Paper's dumping margins using DIBP import data for the 2015 year (1 January to 31 December). Notwithstanding differences between calculations undertaken by the Commission and Australian Paper, the Commission established dumping margins noted in column 3 of the table above. Therefore there appear to be reasonable grounds to support Australian Paper's claims that dumping has occurred and dumping margins are not negligible under subparagraph 269TDA(1)(b)(ii).

A comparison of Australian Paper's dumping margins and the Commission's dumping margin calculations form **Confidential Attachment 9**.

4. Reasonable grounds – subsidisation

4.1. Findings

Pursuant to subsection 269TC(1)(c), the Commission considers that there appear to be reasonable grounds to support the claims that:

- the goods exported to Australia from China and Indonesia have been subsidised
- the estimated subsidy margin for exports from China and Indonesia is greater than 2% and therefore is not negligible
- the estimated volume of goods from China and Indonesia that appear to have been subsidised is greater than 3% of the total Australian import volume of goods and therefore is not negligible.

4.2. Legislative framework

Subsection 269TC(1) requires that the Commissioner reject an application for a countervailing duty notice if, among other things, the Commissioner is not satisfied that there appear to be reasonable grounds for the publication of a countervailing duty notice.

Under section 269TJ, one of the matters that the Parliamentary Secretary must be satisfied of in order to publish a countervailing duty notice is that subsidisation has taken place (to an extent that is not negligible). This issue is considered in the following sections.

4.3. Subsidy programs

4.3.1. Legislative framework

The determination as to whether there is a countervailable subsidy is made in accordance with subsection 269T(1), subsection 269T(2AA), section 269TACC and section 269TAAC.

4.3.2. The Applicant's claims

China

The table below summarises the claims by the applicant that the goods exported to Australia from China have benefited from countervailable subsidies and the evidence relied upon.

<u>Category</u>	<u>Program (number and description)</u>	<u>Details</u>
Provision of inputs for less than adequate remuneration (Programs 1-4)	1. Policy Loans to the Paper Industry	The applicant claims that Chinese producers of A4 copy paper receive benefits in the form of inputs for less than adequate remuneration (LTAR). Australian Paper further contend that domestic prices for raw material inputs are artificially low due to the preferential application of VAT on
	2. Provision of Calcium Carbonate for LTAR	
	3. Provision of Caustic Soda for LTAR	
	4. Provision of Coal for LTAR	

		imports and exports of logs, lumber and wood pulp, and waste paper. In particular, it is claimed by Australian Paper that domestic supply of these raw material is increased because a zero rebate is applied to exports while the VAT rate for imports was decreased. This treatment of pulp and paper raw materials has created incentives which increase the supply of pulp and paper raw materials and hence a reduction in prices that producers pay.
Preferential tax policies (Programs 5-10)	5. VAT rebates relating to raw materials	Australian Paper claims that Chinese copy paper manufacturers benefit from preferential tax policies.
	6. Preferential Income Tax Program for High or New Technology Enterprises	
	7. Preferential Income Tax Program for Comprehensive Utilisation Entitling Enterprise	
	8. Tax Allowance for Special Equipment for Water and Energy-Saving Purchased by Enterprises	
	9. VAT and Import Tariff Exemptions for Imported Equipment	
	10.VAT Rebates on FIE Purchases of Chinese Made Equipment	
Financial grants (Programs 11-15)	11.Subsidies for Energy Efficiency and Environmental Protection	Australian Paper asserts that Chinese producers of copy paper benefit from a number of financial grants provided by the GOC. The provision of subsidies by the GOC assists manufacturers in reducing production costs and selling prices in China and export markets.
	12.Support Fund for Environmental Protection Project - Rizaho City	
	13.Support Fund for Environmental Protection Input	
	14.Support Fund for Environmental Protection Project	
	15.City Bonus for Export Activity from Finance Bureau	

Indonesia

The table below summarises the claims by the applicant that the goods exported to Australia from Indonesia have benefited from countervailable subsidies and the evidence relied upon.

<u>Category</u>	<u>Program (number and description)</u>	<u>Details</u>
Provision of inputs for less than adequate remuneration	1. Provision of Standing Timber for Less Than Adequate Remuneration	<p>Australian Paper asserts that raw materials, in the form of standing timber, is supplied to copy paper producers at a price that is below what would otherwise be in a competitive market.</p> <p>As stated in Australian Paper's application, this program was found to be countervailable in a recent USDOC determination.</p>
	2. Government of Indonesia's Log Export Ban	<p>As the Government of Indonesia has prohibited the export of logs for further processing, the domestic market for raw materials used in the production of copy paper manifests an artificially low price.</p> <p>The price for logs is artificially low because they cannot be exported and must be sold on the domestic market, increasing the supply on the domestic market. If the logs were exported they would attract a price approximate to the world price, and domestic producers would need to bid higher in order to acquire these necessary inputs.</p> <p>This program was found to be countervailable in a recent USDOC determination, and the US found it to be a separate program to Program 1.</p>
Financial benefit	3. Debt Forgiveness – Buyback of debt from the Government of Indonesia	<p>In its application, Australian Paper, relies on the USDOC finding from 2007, where it was found that the sale of government held debt, relating to a certain pulp and paper conglomerate, was sold at well below the market rate. Essentially, this reduced the standing debt owed by the pulp and paper company.</p>

4.3.3. The Commission's assessment

The Applicant relies on the recent findings, relating to countervailable subsidies, by the USDOC, in support of its claims. The Commission has considered the evidence relied upon in that decision and considers that there appears to be reasonable grounds that benefits have been received in relation to the goods exported from China and Indonesia and considers that investigations into countervailable subsidies should be initiated.

China

<u>Category</u>	<u>The Commission's assessment</u>
<p>Provision of goods for less than adequate remuneration (Programs 1-4)</p>	<p>Program 1: Policy Loans to the Paper Industry</p> <p>A recent finding of the USDOC found that <i>Policy Loans to the Paper Industry</i> constituted a benefit in the form of lending costs below what would normally be found in a competitive banking sector. On this basis the Commission considers there are reasonable grounds that benefits have been afforded to the Chinese paper industry in the form of finance provided at below adequate remuneration.</p> <p>Programs 2, 3 and 4: Provision of raw materials at less than adequate remuneration including calcium carbonate, caustic soda, and coal</p> <p>In its finding of 8 January 2016, the USDOC determined that raw materials including calcium carbonate, caustic soda, and coal were being supplied to producers in the Chinese paper industry at prices that are considered below adequate remuneration, relative to what would otherwise be paid in a competitive market. In making this determination, the USDOC concluded that certain suppliers of the aforementioned raw materials were 'public bodies' and conferred a financial contribution to producers through the provision of raw materials.</p> <p>The Commission considers this recent determination by the USDOC as reasonable grounds that benefits may have been received by Chinese exporters of copy paper in the form of certain raw materials provided at below adequate remuneration.</p> <p>Accordingly the Commission accepts that there is a sufficient basis for the Commissioner to be satisfied, having regard to the matters in the application and to other relevant information, that there appear to be reasonable grounds that the programs for provision of goods described by the applicant are countervailable subsidies.</p>
<p>Preferential tax policies (Programs 6-10)</p>	<p>Programs 6 and 7 have been determined as countervailable subsidies by the Commission in previous investigations. Program 7 was the most recent program to be determined as countervailable by the Commission, and was included in the investigation into hot-rolled plate steel exported from China (2013). Program 6 was found to be a countervailable subsidy in the countervailing investigation relating to exports of hollow structural sections (2012).</p> <p>Furthermore, the Applicant points to the recent determination by the USDOC, which found the programs listed as countervailable.</p> <p>Based on the above, the Commission accepts that there is a sufficient basis for the Commissioner to be satisfied that there appear to be reasonable grounds that the tax policies described by the applicant are countervailable subsidies.</p>

Financial grants (Programs 10-14)	<p>Program 14 was found to be countervailable subsidy in 2013 as part of the investigation relating to subsidised exports of galvanised steel and aluminium zinc coated steel.</p> <p>As previously discussed, programs 10-14 have also recently been determined as countervailable subsidies by a USDOC investigation into copy paper.</p> <p>Given the above, the Commission accepts that there is a sufficient basis for the Commissioner to be satisfied that there appear to be reasonable grounds that the financial grants described by the applicant are countervailable subsidies.</p>
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Indonesia

<u>Category</u>	<u>The Commission's assessment</u>
Provision of goods for less than adequate remuneration	<p>Program 1: GOI provision of standing timber for less than adequate remuneration Program 2: GOI's log export ban</p> <p>In its decision of 8 January 2016, the USDOC published its final determination and found countervailing subsidy programs were present in the paper market in Indonesia. Specifically, in relation to the provision of standing timber for less than adequate remuneration, the USDOC outlined how the National Government of Indonesia owned almost all of the harvestable forest land, with timber harvesting only granted under specific licenses. The USDOC found that it was a countervailable subsidy as it was specific, provided a financial contribution and provided a benefit. This benefit was ascertained by comparing the price in Indonesia to an unaffected market (the USDOC considered Malaysia and private transactions between Malaysian pulp log sellers and pulp log exports from Malaysia).</p> <p>Further, the USDOC determined that the log export ban provided a direct benefit to the Indonesian industry by directing log suppliers to provide logs and woodchips for less than adequate remuneration to downstream wood processing industries. This benefit was also ascertained by comparison to the Malaysian export price.</p> <p>Given the above, the Commission considers there are reasonable grounds that benefits have been afforded to the Indonesian paper industry which warrant further investigation.</p>
Financial Benefit	<p>Program 3: Debt forgiveness (buyback of debt from GOI)</p> <p>The USDOC has previously stated concerns regarding the buyback of a loan between the GOI and specific entities in the paper market. This buyback provided a financial benefit and was specific in that it was for individual entities.</p> <p>Although the Applicant has not provided recent information regarding whether the buyback of loans still represents a countervailable subsidy program, more information will be sought during the investigation to confirm whether A4 copy paper exported from Indonesia during the investigation period received a benefit from this program.</p>

4.4. Amount of countervailable subsidy

4.4.1. Legislative framework

Subsidy margins are determined under section 269TACD.

The amount of the countervailable subsidisation and the volume of subsidised goods cannot be negligible. Whether the countervailable subsidisation and the volume of subsidised goods are negligible is assessed under section 269TDA.

4.4.2. The Commission's assessment

The table below summarises the subsidy margins given by the Applicant, which are based on the recent findings of the USDOC in relation to subsidised copy paper from China and Indonesia. Subsidy margins are expressed as a percentage of the export price. The table also indicates whether the Commission is satisfied that the subsidy margin and volume of subsidised goods are above negligible levels.

Country	The Applicant's estimate	Negligible margin?	Negligible volume?
China	7.23% to 176.75%	No	No
Indonesia	21.22% to 2019.15%	No	No

5. Reasonable grounds – injury to the Australian industry

5.1. Findings

Pursuant to subsection 269TC(1)(c), having regard to the matters contained in the application, and to other information considered relevant, the Commission considers that there appear to be reasonable grounds to support the claims that the Australian industry has experienced injury in the form of:

- loss of sales volume;
- reduced market share;
- price depression;
- loss of profits;
- reduced profitability;
- reduced employment;
- reduced capacity utilisation; and
- reduced return on investment.

5.2. Legislative framework

Under sections 269TG and 269TJ of the Act, one of the matters that the Parliamentary Secretary must be satisfied of in order to publish a dumping duty or a countervailing duty notice is that the Australian industry has experienced material injury. This issue is considered in the following sections.

5.3. The Applicant's claims

Australian Paper claims that the Australian industry has been injured through:

- loss of sales volume;
- reduced market share;
- price depression;
- loss of profits;
- reduced profitability;
- reduced employment;
- reduced capacity utilisation; and
- reduced return on investment.

In its application, Australian Paper claims that it observed a sharp increase in import volumes of A4 copy paper at dumped prices in 2013. Australian Paper introduced a number of cost reduction initiatives that assisted in improving the company's competitiveness with imports in the 2013 year. However, Australian Paper claims that in 2015 the Applicant was not able to reduce costs to match selling prices. This led to a diminution in profit and profitability, and flow-on effects to other parts of the business.

For the purposes of the following injury analysis, the Commission analysed Australian Paper's claims from 1 January 2010 to 31 December 2015 (the injury analysis period). However, for the purposes of this investigation, the injury analysis period will be assessed from 1 January 2012 to 31 December 2015.

5.4. Approach to injury analysis

5.4.1. Legislative framework

The matters that may be considered in determining whether the industry has suffered material injury are set out in section 269TAE.

5.4.2. The Commission's approach

The following injury analysis is based on:

- Australian Paper provided costs, sales and other financial data;
- DIBP import data; and
- TradeData information

5.5. Volume effects

5.5.1. Sales volume

For the purposes of assessing volume effects, specifically in relation to Australian Paper's sales, the Commission has conducted a macro analysis.

Loss of volume

Australian Paper claims it experienced a loss of sales volume due to growth in the volume of dumped imports of A4 copy paper from Brazil, China, Indonesia and Thailand. The figure below shows the volume of Australian Paper's sales of A4 copy paper over the injury analysis period.

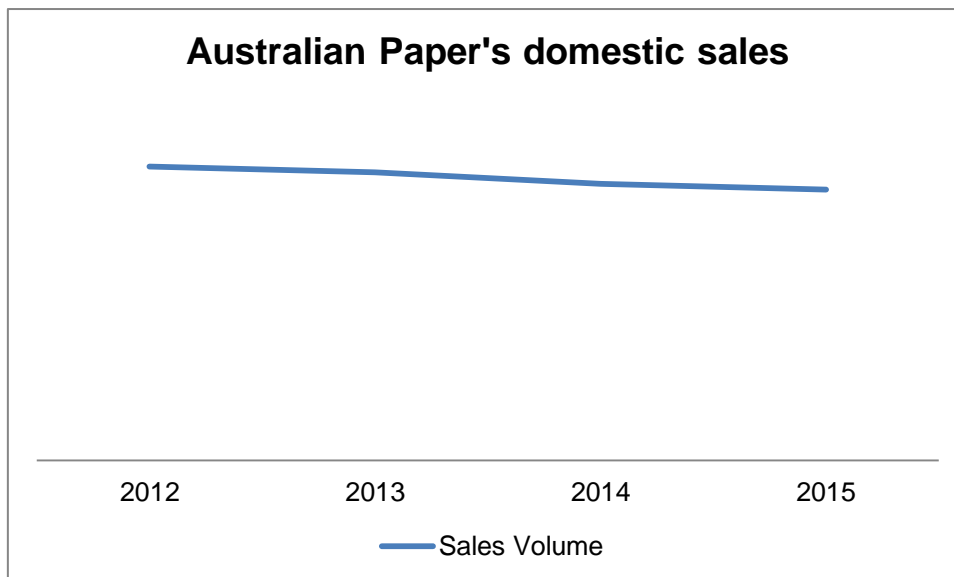


Figure 2: Australian Paper's Domestic Sales over the investigation period

The Commission observes in the above figure that there has been a consistent decline in Australian Paper's domestic sales volume over the investigation period.

5.5.2. Market share

Australian Paper claims that it has lost market share over the injury analysis period to imports from Brazil, China, Indonesia and Thailand.

Figure 3 below shows the total Australian market with proportions of Australian domestic production and imports over the injury analysis period.

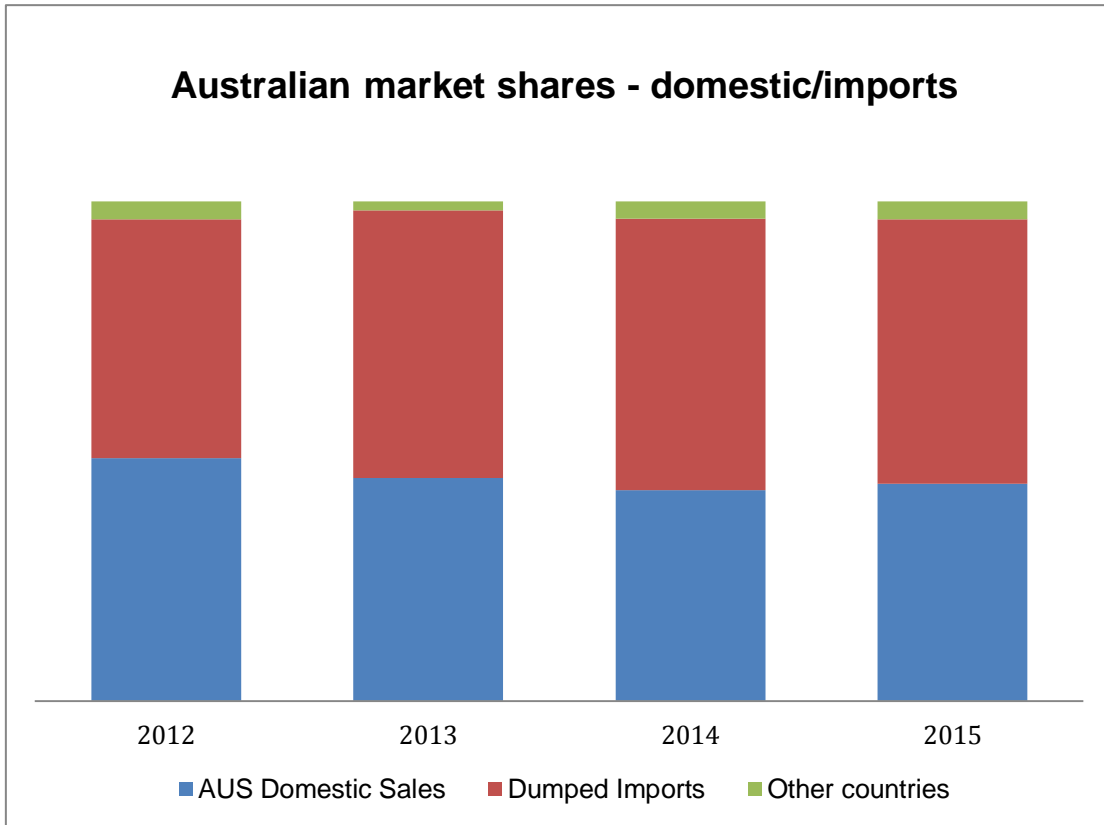


Figure 3: Market share in Australia over the investigation period

The Commission observes that the market share of imports has exceeded 50 per cent over the injury analysis period and is steadily increasing, albeit at a consistent level from 2014 to 2015. The Commission's market share analysis is contained in **Confidential Attachment 10**.

5.5.3. Conclusion – volume effects

Imported A4 copy paper represents approximately half of the Australian A4 copy paper market and has increased over the course of the injury analysis period. Based on the information currently available, the Commission considers that there appear to be reasonable grounds for Australian Paper's claims that it has suffered loss of sales volume and reduced market share.

The Commission's market share analysis is contained in **Confidential Attachment 10**.

5.6. Price effects

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between prices and costs.

The figure below shows the movement in weighted average net prices (per tonne) and unit cost to make and sell (per tonne) provided by Australian Paper over the injury analysis period.

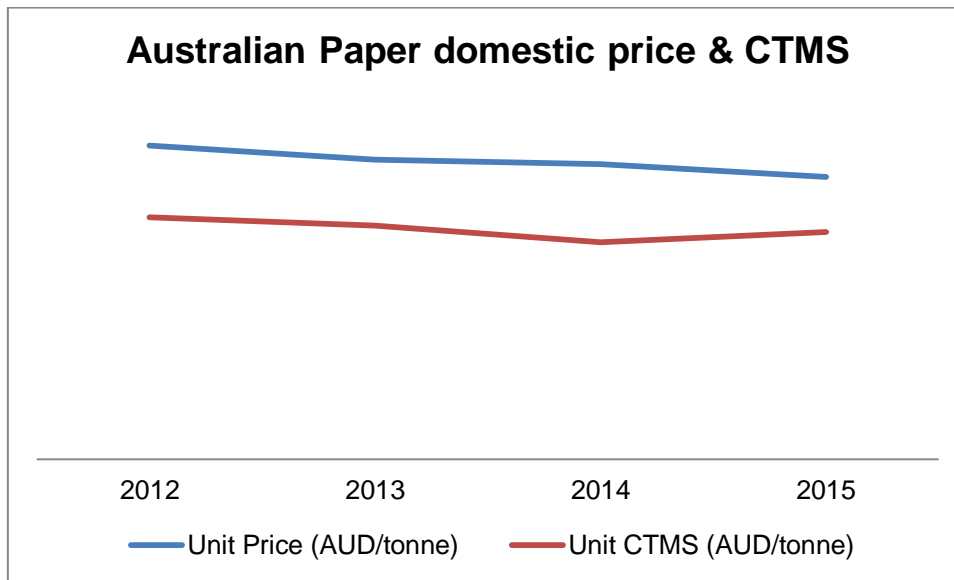


Figure 4: Australian Paper’s domestic price & CTMS over the investigation period

The figure above shows that Australian Paper’s unit selling prices exceeded its unit cost to make and sell during the injury analysis period. The Commission observes a downward trend in unit price and proportional reduction in the CTMS from 2012 to 2014. From 2014 the amount by which prices exceeded costs (i.e. the margin) experiences a contraction and trends narrower as the unit price continues to decrease while Australian Paper is not able to continue reducing costs.

The figure below outlines the annual sales volumes and unit sales prices for the injury analysis period.

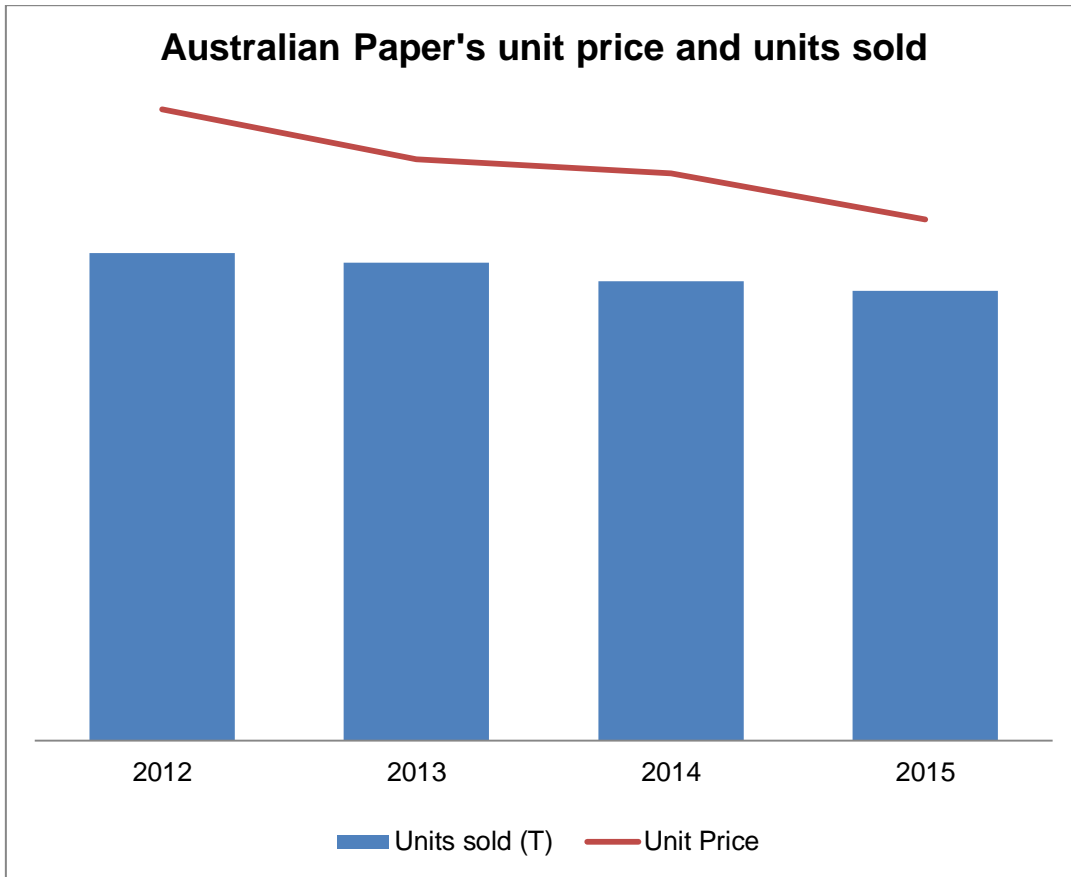


Figure 5: Australian Paper's unit price & units sold over the investigation period

The figure above shows that Australia Paper has had a decrease in unit price over the injury period with a decline in sales volumes. The rate of decline in unit price is greater than the rate of decline in units sold and the continuing decline has had a more pronounced impact on units sold in 2014 and 2015. The applicant noted in their application that despite the Australian market remaining stable over the course of the injury analysis period, and the ongoing effort of the applicant to reduce costs and remain competitive, there has been a steady decline in domestic sales.

The Commission's assessment of price effects in the Australian industry is contained in **Confidential Attachment 10**.

5.6.1. Conclusion – price effects

Based on this assessment, there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of price depression and price suppression.

5.7. Profit and profitability effects

The figure below shows the total and per unit profit over the injury analysis period.

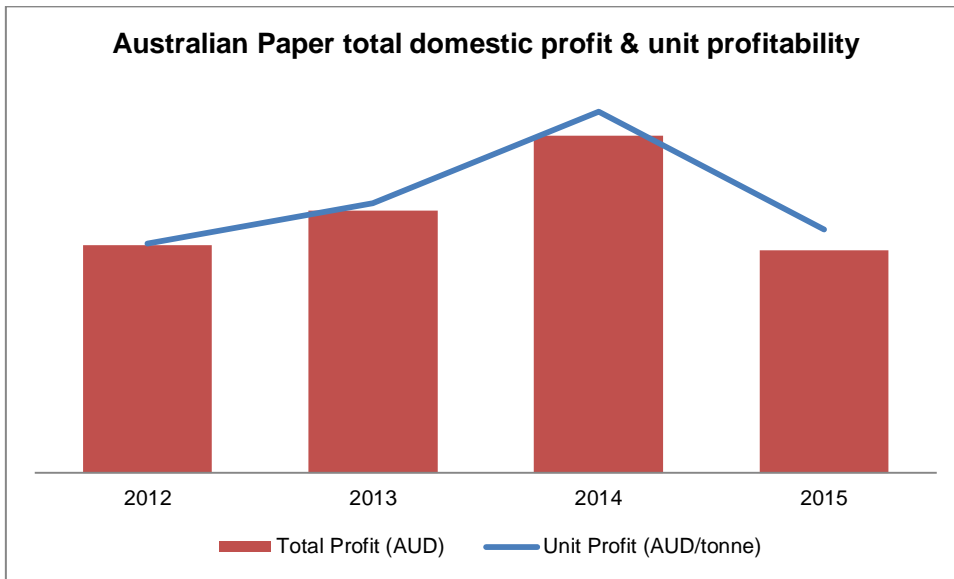


Figure 6: Applicant’s domestic profit & unit profitability over the investigation period

This figure shows there was a consistent lift in both total profit and unit profitability from 2012 to 2014. In 2015, however, there was a sharp decline in both total profit and unit profitability, bringing the Applicant back towards the 2012 levels.

The Commission’s assessment of the Australian industry’s profit and profitability effects are contained in **Confidential Attachment 10**.

5.7.1. Conclusion – profit and profitability effects

Based on the above there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of loss of profits and reduced profitability during the latter part of the injury analysis period.

5.8. Other injury factors

Australian Paper completed Confidential Appendix A7 as part of its application. This appendix contained quarterly data for the injury analysis period and sought to demonstrate injury to the below considerations.

The figure below shows the reduction in capacity utilisation over the course of the investigation period.

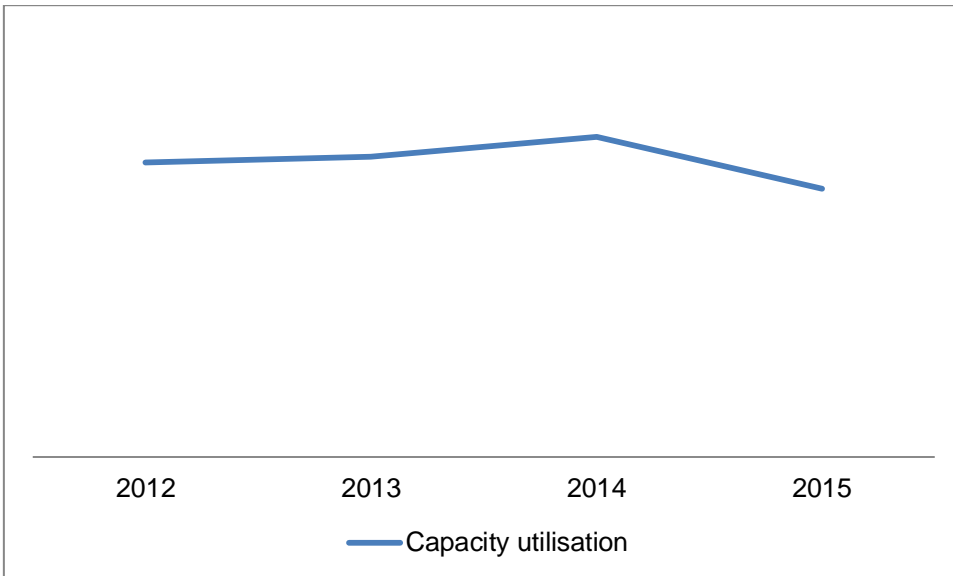


Figure 7: Applicant’s capacity utilisation over the investigation period

The figure above demonstrates that there was a consistent growth in the capacity utilisation of Australian Paper from 2012 to 2014 but a sharp decline in the 2015 calendar year. Ultimately the company finished the 2015 year significantly below the capacity utilisation in the 2012 year.

The figure below shows the reduction in the return on investment over the course of the investigation period.

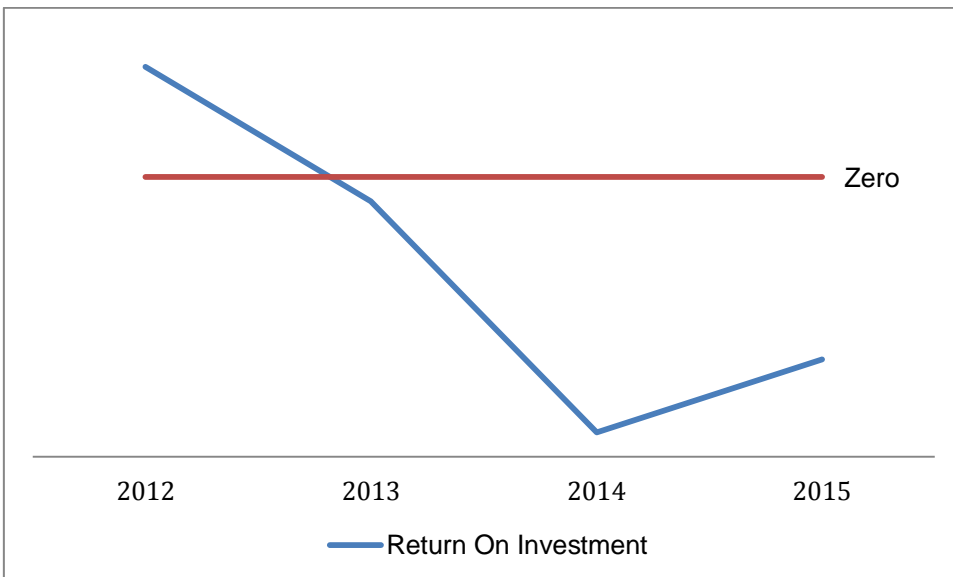


Figure 8: Applicant’s return on investment over the investigation period

There has been a considerable decline in the return on investment over the investigation period with the Applicant sitting well below zero since the 2013 year.

The figure below shows the change in employment index over the course of the investigation period.

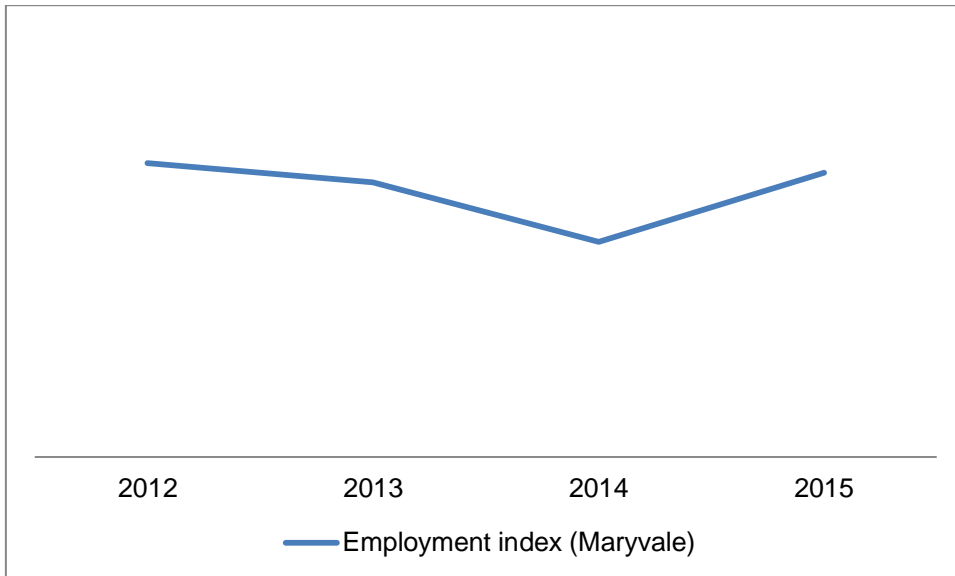


Figure 9: Applicant’s employment index over the investigation period

The applicant made significant reductions to employee numbers at the Maryvale plant from 2012 to 2014 but had an increase in employees in the 2015 year.

5.8.1. Conclusion – other injury factors

The Commission has considered the other injury factors outlined above and there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury with respect to several economic factors. These will be considered further during the course of the investigation.

5.8.2. The Commission’s assessment

The Commission’s assessment of the other injury factors of the Australian industry are contained in **Confidential Attachment 10**.

6. Reasonable grounds – causation factors

6.1. Findings

Having regard to the matters contained in the application, and to other information considered relevant, the Commission considers that there appears to be reasonable grounds to support the claims that the Australian industry has suffered injury caused by dumping and subsidisation, and that the injury is material.

6.2. Cause of injury to the Australian industry

6.2.1. Legislative framework

Under section 269TG and 269TJ, one of the matters that the Parliamentary Secretary must be satisfied of in order to publish a dumping duty and countervailing duty notice is that the material injury suffered by the Australian industry was caused by dumping and subsidisation. This issue is considered in the following sections.

Matters that may be considered in determining whether the Australian industry has suffered material injury caused by dumped or subsidised goods are set out in section 269TAE.

6.3. The Applicant's claims

The table below summarises the causation claims of the applicant.

Injury caused by dumping and/or subsidisation
<p><u>Sales Volume</u></p> <ul style="list-style-type: none">• Volumes have been lost to exports of the goods from Brazil, China, Indonesia, and Thailand.
<p><u>Price Effects</u></p> <ul style="list-style-type: none">• The applicant has reduced prices in response to price undercutting by Brazilian, Chinese, Indonesian, and Thai exporters in an attempt to retain sales volumes.
<p><u>Market Share</u></p> <ul style="list-style-type: none">• As a result of price undercutting from imported A4 copy paper from Brazil, China, Indonesia and Thailand the market share of the Australian industry has decreased over the injury analysis period.
<p><u>Profit Effects</u></p> <ul style="list-style-type: none">• Reduced sales volumes and revenues have had a direct impact on profits and profitability; and• Reduced utilisation of production capacity and reduced sales have contributed to an increase in unit CTMS, thus impacting profitability.
Injury caused by other factors
<p><u>Total market growth</u></p> <ul style="list-style-type: none">• Australian Paper acknowledged that the market for A4 copy paper is a mature market. However, the market has historically grown by 2% per annum. 2015 represented a larger than usual decline in demand, which exacerbated the injury caused by dumped imports.

6.3.1. The Commission's assessment

6.3.1.1. Volume effects

In Figure 10, below, the Commission has further charted the volume of dumped imports against the weighted average FOB export price per tonne over the injury analysis period. As illustrated, over the injury analysis period, the price of allegedly dumped imports has been rising, while volume initially increased from 2012 to 2013 it remained relatively stable before declining from 2014 to 2015.

During the injury analysis period, sales volume for the Australian industry has trended downward. In the absence of price undercutting from Brazil, China, Indonesia, and Thailand there are reasonable grounds to consider whether the Australian industry's sales volume would not have declined during the period from 2012 to 2014.

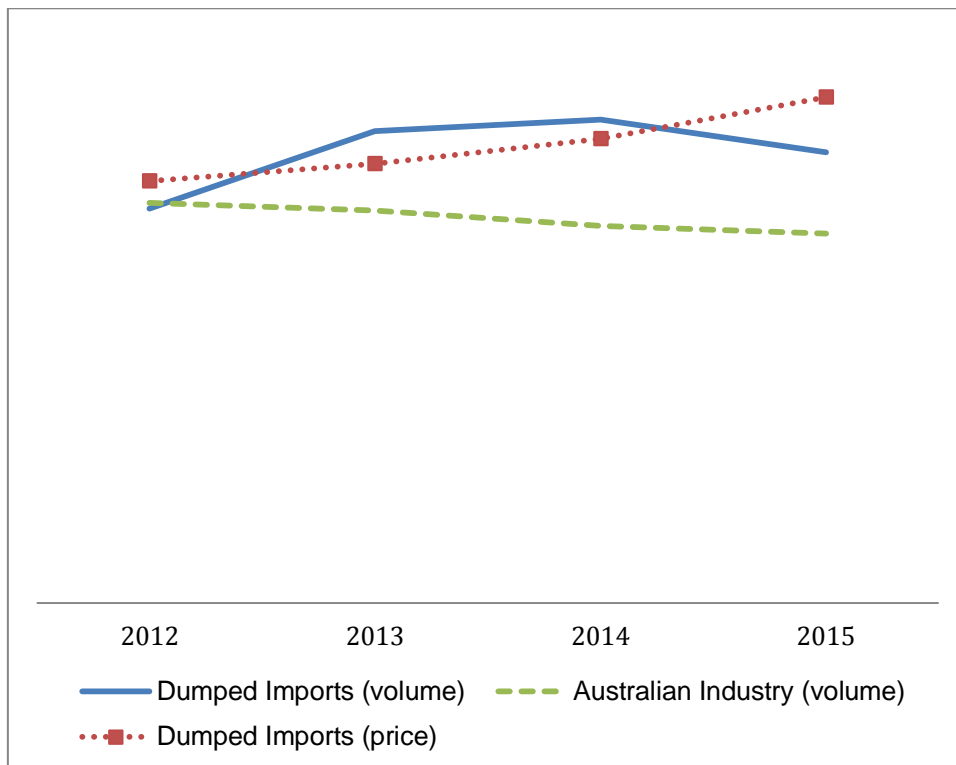


Figure 10: Effect on volume over the investigation period

6.3.1.2. Price effects

The Commission is satisfied that the market size for A4 copy paper has been relatively stable across the injury analysis period. The Commission accepts that as customers can purchase either from the applicant or from an import supply source. Import offers and movement in price of import offers can be used to negotiate prices with the applicant. The Commission considers that the applicant is obliged to respond to the price of imports in order to remain price competitive.

Price undercutting

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

The evidence in the application supporting price undercutting predominantly relies on market intelligence gathered by the applicant. The applicant claimed that the price undercutting information it has obtained supported its position that it has lost sales volumes to imported A4 copy paper from Brazil, China, Indonesia, and Thailand.

Figure 11 below, shows the average weighted per tonne CIF export price from Brazil, China, Indonesia, and Thailand compared to Australian Paper's per tonne price from 2012 to 2015. The export price data was sourced from the imports database of the DIBP.

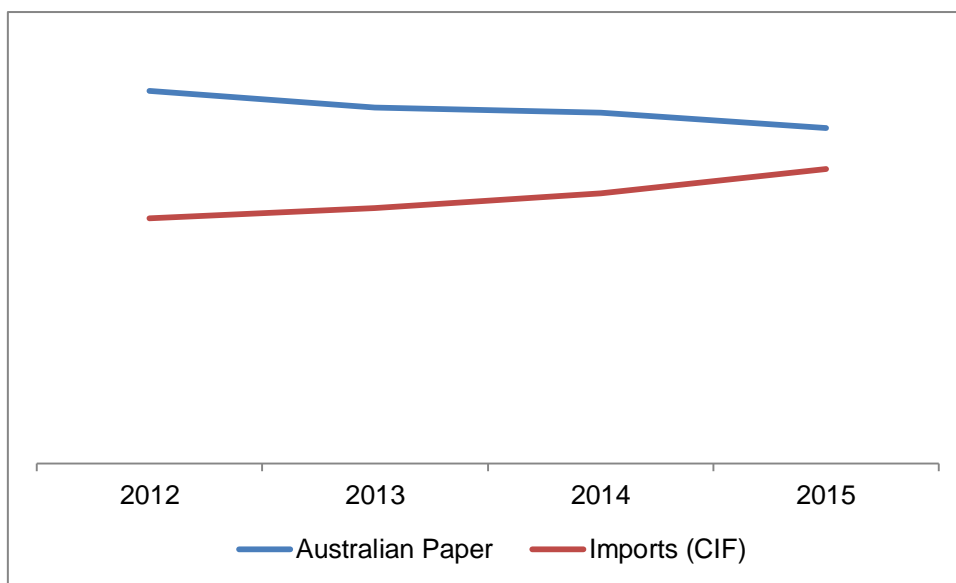


Figure 11: Comparison of import price and domestic Australian price

As shown above in Figure 11, the weighted average CIF export price of A4 copy paper from Brazil, China, Indonesia and Thailand has been lower than the Australian industry's. While the two prices have converged somewhat, the weighted average export price is still below Australian Paper's. Based on this analysis, there appears to be reasonable grounds to support the claim that imports have consistently undercut the Australian industry's prices.

6.3.1.3. Comparison of export price and non-injurious price

As an additional test to establish whether there is a causal link between the alleged dumped and subsidised goods and material injury, the Commission sought to compare weighted average export prices of 'dumped imports' with an estimate of a non-injurious price (NIP) for the 12 months ending 31 December 2015.

To calculate the estimated NIP, the Commission estimated the unsuppressed selling price (USP) for A4 copy paper for the 12 months ending 31 December 2015 using the unit sales revenue of Australian Paper.

The Commission then deducted amounts from that USP for importer SG&A and profit, including into-store costs, Customs duty and overseas freight. These calculations provided for a NIP at the FOB level.

The weighted average export price for the investigation period was at a comparable level to the NIP. However, the Commission does have some reservations regarding the data used to calculate the NIP. Specifically, the Commission calculated the NIP using verified importer SG&A data from a previous investigation, though, this data was questionable in terms of potentially overstating the SG&A costs.

With the above in mind, the Commission considers the comparison of export price to the NIP to be inconclusive, at this stage, as an indicator of the link between ‘dumped imports’ and injury to the Australian industry.

The Commission’s calculations of the NIP and the comparison with export price are at **Confidential Attachment 11**.

6.3.1.4. Profit effects

Australian Paper’s unit profit over the injury analysis period contrasts somewhat with its unit price, as discussed previously. While Australian Paper’s unit price trended downward over the injury analysis period, unit profit, as shown below in Figure 11, initially moved upwards before declining from 2014 to 2015 roughly to the level seen in 2012.

In its application, Australian Paper stated that in order to compete with decreasing prices caused by increasing imports, it implemented a number of cost-cutting exercises. This contributed to an increase in unit profit from 2013 to 2014, however, the lower price of ‘dumped imports’ applied pressure on Australian Paper to decrease its unit price in order to maintain sales volume.

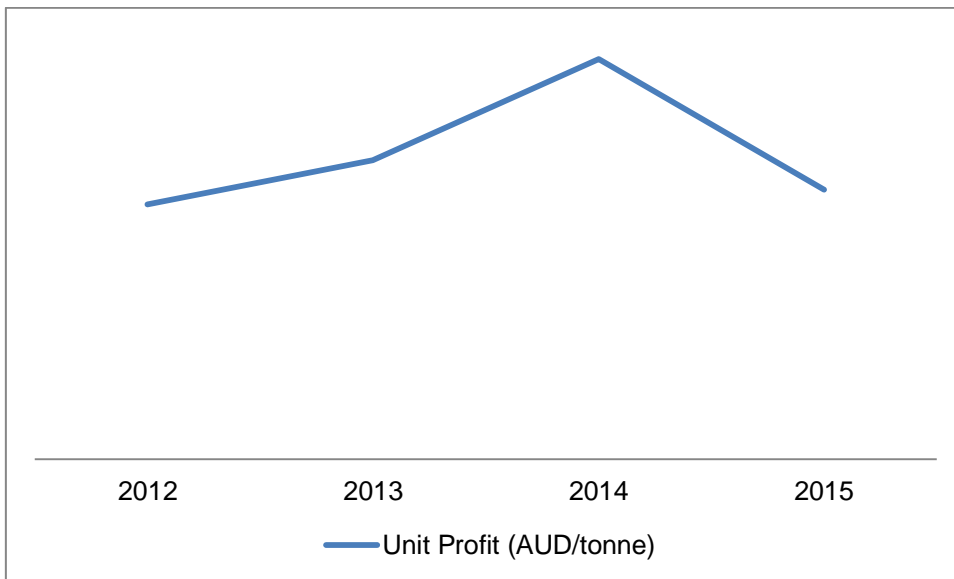


Figure 12: Unit profit for Australian Paper over the investigation period

6.3.2. Conclusion – material injury caused by dumping and/or subsidisation

The Commission considers that:

- the level of the dumping indicated in the application;
- the likelihood that Chinese and Indonesian exporters of A4 copy paper have benefited from countervailable subsidies; and
- the preliminary assessment of price depression and price suppression

reasonably supports a conclusion that dumping from Brazil and Thailand and dumping and subsidisation from China and Indonesia has caused material injury to the Australian industry.

The Commissioner will also examine whether the trade in the dumped or subsidised goods provides a basis for any dumping duty and/or countervailing duty notice to apply retrospectively, pursuant to section 269TN.

7. Appendices and attachments

Appendices	Title
Appendix 1	Legislative framework

Attachments	Confidentiality	Title
Attachment 1	Public	Public notice
Attachment 2	Public	History of anti-dumping investigations on paper
Attachment 3	Public	Comparison of recent outcomes between US and Australian jurisdictions
Attachment 4	Confidential	Countervailable subsidies that were considered in the US case
Attachment 5	Confidential	Australian Paper's Production Process
Attachment 6	Confidential	Commission's assessment of the Australian market for A4 copy paper
Attachment 7	Confidential	Australian industry's calculation of export price and Commission's comparison
Attachment 8	Confidential	Australian industry's estimation of normal value and the Commission's assessment
Attachment 9	Confidential	Comparison of Australian Paper's dumping margins and the Commission's dumping margin calculations
Attachment 10	Confidential	Commission's assessment of price effects in the Australian industry

Appendix 1 – Legislative framework

Part XVB of the *Customs Act 1901*

Division 1A – Anti-Dumping Commission and Commissioner

269SMS Form and manner of applications

- (1) The Commissioner may, by writing, approve a form for the purposes of a provision of this Part.
- (2) The Commissioner may, by writing, approve the manner of lodging an application under a provision of this Part.
- (3) The Commissioner may, by writing, approve the manner of withdrawing, under subsection 269TB(3), an application lodged under subsection 269TB(1) or (2).

Division 1 – Definitions and role of Minister

269T Definitions

- (1) In this Part, unless the contrary intention appears:

...

countervailable subsidy means a subsidy that is, for the purposes of section 269TAAC, a countervailable subsidy.

...

countervailing duty notice means a notice published by the Minister under subsection 269TJ(1) or (2) or 269TK(1) or (2).

...

investigation period, in relation to an application for a dumping duty notice or a countervailing duty notice in respect of goods, means a period specified by the Commissioner in a notice under subsection 269TC(4) to be the investigation period in relation to the application.

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

...

subsidy, in respect of goods exported to Australia, means:

- (a) a financial contribution:
 - (i) by a government of the country of export or country of origin of the goods; or

⁹ Note: Ellipses are used in this Appendix to indicate an intentional omission of a whole section, subsection or paragraph of the legislation, without altering the original meaning of the legislation.

- (ii) by a public body of that country or a public body of which that government is a member; or
- (iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;

that involves:

- (iv) a direct transfer of funds from that government or body; or
 - (v) the acceptance of liabilities, whether actual or potential, by that government or body; or
 - (vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or
 - (vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; or
 - (viii) the purchase by that government or body of goods or services; or
- (b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;

if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.

Note 1: See also subsection (2AA).

Note 2: Section 269TACC deals with whether a financial contribution or income or price support confers a benefit.

...

- (2) For the purposes of this Part, goods, other than unmanufactured raw products, are not to be taken to have been produced in Australia unless the goods were wholly or partly manufactured in Australia.

...

- (2AA) Without limiting the definition of **subsidy** in subsection (1), a financial contribution or income or price support may confer a benefit in relation to goods exported to Australia if that contribution or support is made in relation to goods or services used in relation to the production, manufacture or export of the goods exported to Australia.

...

- (2AD) The fact that an investigation period is specified to start at a particular time does not imply that the Minister may not examine periods before that time for the purpose of determining whether material injury has been caused to an Australian industry or to an industry of a third country.

...

- (3) For the purposes of subsection (2), goods shall not be taken to have been partly manufactured in Australia unless at least one substantial process in the manufacture of the goods was carried out in Australia.
- (4) For the purposes of this Part, if, in relation to goods of a particular kind, there is a person or there are persons who produce like goods in Australia:
- (a) there is an Australian industry in respect of those like goods; and
 - (b) subject to subsection (4A), the industry consists of that person or those persons.

- (4A) Where, in relation to goods of a particular kind first referred to in subsection (4), the like goods referred to in that subsection are close processed agricultural goods, then, despite subsection (4), the industry in respect of those close processed agricultural goods consists not only of the person or persons producing the processed goods but also of the person or persons producing the raw agricultural goods from which the processed goods are derived.

269TA Minister may give directions to Commissioner in relation to powers and duties under this Part

(1) The Minister may give to the Commissioner such written directions in connection with carrying out or giving effect to the Commissioner's powers and duties under this Part as the Minister thinks fit, and the Commissioner shall comply with any directions so given.

(2) A direction under subsection (1) shall not deal with carrying out or giving effect to the powers or duties of the Commissioner in relation to a particular consignment of goods or to like goods to goods in a particular consignment but shall deal instead with the general principles for carrying out or giving effect to the Commissioner's powers.

(3) Where the Minister gives a direction to the Commissioner, the Minister shall:

(a) cause a notice setting out particulars of the direction to be published on the Anti-Dumping Commission's website as soon as practicable after giving the direction; and

(b) cause a copy of that notice to be laid before each House of the Parliament within 15 sitting days of that House after the publication of the notice on the Anti-Dumping Commission's website.

(4) A notice setting out particulars of a direction is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

269TAAC Definition—countervailable subsidy

(1) For the purposes of this Part, a subsidy is a countervailable subsidy if it is specific.

(2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:

(a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or

(b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or

(c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or

(d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.

(3) Subject to subsection (4), a subsidy is not specific if:

(a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and

- (b) eligibility for the subsidy is automatic; and
 - (c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and
 - (d) those criteria or conditions are strictly adhered to in the administration of the subsidy.
- (4) The Minister may, having regard to:
- (a) the fact that the subsidy program benefits a limited number of particular enterprises; or
 - (b) the fact that the subsidy program predominantly benefits particular enterprises; or
 - (c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or
 - (d) the manner in which a discretion to grant access to the subsidy has been exercised;
- determine that the subsidy is specific.
- (5) In making a determination under subsection (4), the Minister must take account of:
- (a) the extent of diversification of economic activities within the jurisdiction of the subsidising authority; and
 - (b) the length of time during which the subsidy program has been in operation.

...

269TAAD Ordinary course of trade

- (1) If the Minister is satisfied, in relation to goods exported to Australia:
- (a) that like goods are sold in the country of export in sales that are arms length transactions in substantial quantities during an extended period:
 - (i) for home consumption in the country of export; or
 - (ii) for exportation to a third country;
 at a price that is less than the cost of such goods; and
 - (b) that it is unlikely that the seller of the goods will be able to recover the cost of such goods within a reasonable period;
- the price paid for the goods referred to in paragraph (a) is taken not to have been paid in the ordinary course of trade.
- (2) For the purposes of this section, sales of goods at a price that is less than the cost of such goods are taken to have occurred in substantial quantities during an extended period if the volume of sales of such goods at a price below the cost of such goods over that period is not less than 20% of the total volume of sales over that period.
- (3) Costs of goods are taken to be recoverable within a reasonable period of time if, although the selling price of those goods at the time of their sale is below their cost at that time, the selling price is above the weighted average cost of such goods over the investigation period.
- (4) The cost of goods is worked out by adding:
- (a) the amount determined by the Minister to be the cost of production or manufacture of those goods in the country of export; and

- (b) the amount determined by the Minister to be the administrative, selling and general costs associated with the sale of those goods.
- (5) Amounts determined by the Minister for the purposes of paragraphs (4)(a) and (b) must be worked out in such manner, and taking account of such factors, as the regulations provide in respect of those purposes.

269TAA Arms length transactions

- (1) For the purposes of this Part, a purchase or sale of goods shall not be treated as an arms length transaction if:
 - (a) there is any consideration payable for or in respect of the goods other than their price; or
 - (b) the price appears to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
 - (c) in the opinion of the Minister the buyer, or an associate of the buyer, will, subsequent to the purchase or sale, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.
- (1A) For the purposes of paragraph (1)(c), the Minister must not hold the opinion referred to in that paragraph because of a reimbursement in respect of the purchase or sale if the Minister is of the opinion that the purchase or sale will remain an arms length transaction in spite of the payment of that reimbursement, having regard to any or all of the following matters:
 - (a) any agreement, or established trading practices, in relation to the seller and the buyer, in respect of the reimbursement;
 - (b) the period for which such an agreement or practice has been in force;
 - (c) whether or not the amount of the reimbursement is quantifiable at the time of the purchase or sale.
- (2) Without limiting the generality of subsection (1), where:
 - (a) goods are exported to Australia otherwise than by the importer and are purchased by the importer from the exporter (whether before or after exportation) for a particular price; and
 - (b) the Minister is satisfied that the importer, whether directly or through an associate or associates, sells those goods in Australia (whether in the condition in which they were imported or otherwise) at a loss;

the Minister may, for the purposes of paragraph (1)(c), treat the sale of those goods at a loss as indicating that the importer or an associate of the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or a part of the price.
- (3) In determining, for the purposes of subsection (2), whether goods are sold by an importer at a loss, the Minister shall have regard to:
 - (a) the amount of the price paid or to be paid for the goods by the importer; and
 - (b) such other amounts as the Minister determines to be costs necessarily incurred in the importation and sale of the goods; and

- (c) the likelihood that the amounts referred to in paragraphs (a) and (b) will be able to be recovered within a reasonable time; and
 - (d) such other matters as the Minister considers relevant.
- (4) For the purposes of this Part, 2 persons shall be deemed to be associates of each other if, and only if:
- (a) both being natural persons:
 - (i) they are members of the same family; or
 - (ii) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;
 - (b) both being bodies corporate:
 - (i) both of them are controlled, directly or indirectly, by a third person (whether or not a body corporate); or
 - (ii) both of them together control, directly or indirectly, a third body corporate; or
 - (iii) the same person (whether or not a body corporate) is in a position to cast, or control the casting of, 5% or more of the maximum number of votes that might be cast at a general meeting of each of them; or
 - (c) one of them, being a body corporate, is, directly or indirectly, controlled by the other (whether or not a body corporate); or
 - (d) one of them, being a natural person, is an employee, officer or director of the other (whether or not a body corporate); or
 - (e) they are members of the same partnership.

Note: In relation to the reference to member of a family in subparagraph (4)(a)(i), see also section 4AAA.

269TAB Export price

- (1) For the purposes of this Part, the export price of any goods exported to Australia is:
- (a) where:
 - (i) the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and
 - (ii) the purchase of the goods by the importer was an arms length transaction;

the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation; or

- (b) where:
 - (i) the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and
 - (ii) the purchase of the goods by the importer was not an arms length transaction; and

- (iii) the goods are subsequently sold by the importer, in the condition in which they were imported, to a person who is not an associate of the importer;

the price at which the goods were so sold by the importer to that person less the prescribed deductions; or

- (c) in any other case—the price that the Minister determines having regard to all the circumstances of the exportation.

- (1A) For the purposes of paragraph (1)(a), the reference in that paragraph to the price paid or payable for goods is a reference to that price after deducting any amount that is determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of that transaction.
- (2) A reference in paragraph (1)(b) to prescribed deductions in relation to a sale of goods that have been exported to Australia shall be read as a reference to:
 - (a) any duties of Customs or sales tax paid or payable on the goods; and
 - (b) any costs, charges or expenses arising in relation to the goods after exportation; and
 - (c) the profit, if any, on the sale by the importer or, where the Minister so directs, an amount calculated in accordance with such rate as the Minister specifies in the direction as the rate that, for the purposes of paragraph (1)(b), is to be regarded as the rate of profit on the sale by the importer.
- (3) Where the Minister is satisfied that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under the preceding subsections, the export price of those goods shall be such amount as is determined by the Minister having regard to all relevant information.
- (4) For the purposes of this section, the Minister may disregard any information that he or she considers to be unreliable.
- (5) Paragraphs (1)(a) and (b) apply in relation to a purchase of goods by an importer from an exporter whether or not the importer and exporter are associates of each other.

269TAC Normal value of goods

- (1) Subject to this section, for the purposes of this Part, the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.
- (1A) For the purposes of subsection (1), the reference in that subsection to the price paid or payable for like goods is a reference to that price after deducting any amount that is determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of the sales.
- (2) Subject to this section, where the Minister:
 - (a) is satisfied that:
 - (i) because of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under subsection (1); or
 - (ii) because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1);

the normal value of goods exported to Australia cannot be ascertained under subsection (1); or

- (b) is satisfied, in a case where like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter, that it is not practicable to obtain, within a reasonable time, information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1);

the normal value of the goods for the purposes of this Part is:

- (c) except where paragraph (d) applies, the sum of:
 - (i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and
 - (ii) 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—such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale; or
 - (d) if the Minister directs that this paragraph applies—the price determined by the Minister to be the price paid or payable for like goods sold in the ordinary course of trade in arms length transactions for exportation from the country of export to a third country determined by the Minister to be an appropriate third country, other than any amount determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of any such transactions.
- (3) The price determined under paragraph (2)(d) is a price that the Minister determines, having regard to the quantity of like goods sold as described in paragraph (2)(d) at that price, is representative of the price paid in such sales.
- (3A) The Minister is not required to consider working out the normal value of goods under paragraph (2)(d) before working out the normal value of goods under paragraph (2)(c).
- (4) Subject to subsections (6) and (8), where the Minister is satisfied that it is inappropriate to ascertain the normal value of goods in accordance with the preceding subsections because the Government of the country of export:
- (a) has a monopoly, or substantial monopoly, of the trade of the country; and
 - (b) determines or substantially influences the domestic price of goods in that country;

the normal value of the goods for the purposes of this Part is to be a value ascertained in accordance with whichever of the following paragraphs the Minister determines having regard to what is appropriate and reasonable in the circumstances of the case:

- (c) a value equal to the price of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country, being sales that are arms length transactions;
- (d) a value equal to the price determined by the Minister to be the price of like goods produced or manufactured in a country determined by the Minister and sold in the ordinary course of trade in arms length transactions for exportation from that country to a third country determined by the Minister to be an appropriate third country;

- (e) a value equal to the sum of the following amounts ascertained in respect of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country:
 - (i) such amount as the Minister determines to be the cost of production or manufacture of the like goods in that country;
 - (ii) such amounts as the Minister determines to be the administrative, selling and general costs associated with the sale of like goods in that country and the profit on that sale;
 - (f) a value equal to the price payable for like goods produced or manufactured in Australia and sold for home consumption in the ordinary course of trade in Australia, being sales that are arms length transactions.
- (5) The price determined under paragraph (4)(d) is a price that the Minister determines, because of the quantity of like goods sold as described in paragraph (4)(d) at that price, is representative of the price paid in such sales.
- (5A) Amounts determined:
- (a) to be the cost of production or manufacture of goods under subparagraph (2)(c)(i) or (4)(e)(i); and
 - (b) to be the administrative, selling and general costs in relation to goods under subparagraph (2)(c)(ii) or (4)(e)(ii);
- must be worked out in such manner, and taking account of such factors, as the regulations provide for the respective purposes of paragraphs 269TAAD(4)(a) and (b).
- (5B) The amount determined to be the profit on the sale of goods under subparagraph (2)(c)(ii) or (4)(e)(ii), must be worked out in such manner, and taking account of such factors, as the regulations provide for that purpose.
- (5C) Without limiting the generality of the matters that may be taken into account by the Minister in determining whether a third country is an appropriate third country for the purposes of paragraph (2)(d) or (4)(d), the Minister may have regard to the following matters:
- (a) whether the volume of trade from the country of export referred to in paragraph (2)(d) or the country first-mentioned in paragraph (4)(d) is similar to the volume of trade from the country of export to Australia; and
 - (b) whether the nature of the trade in goods concerned between the country of export referred to in paragraph (2)(d) or the country first-mentioned in paragraph (4)(d) is similar to the nature of trade between the country of export and Australia.
- (5D) The normal value of goods (the exported goods) is the amount determined by the Minister, having regard to all relevant information, if the exported goods are exported to Australia and the Minister is satisfied that the country of export has an economy in transition and that at least one of the following paragraphs applies:
- (a) both of the following conditions exist:
 - (i) the exporter of the exported goods sells like goods in the country of export;
 - (ii) market conditions do not prevail in that country in respect of the domestic selling price of those like goods;

- (b) both of the following conditions exist:
 - (i) the exporter of the exported goods does not sell like goods in the country of export but others do;
 - (ii) market conditions do not prevail in that country in respect of the domestic selling price of those like goods;
- (c) the exporter of the exported goods does not answer questions in a questionnaire given to the exporter by the Commissioner under subsection 269TC(8) within the period described in that subsection or subsection 269TC(9) for answering questions;
- (d) the answers given within the period mentioned in subsection 269TC(8), or the further period mentioned in subsection 269TC(9), by the exporter of the exported goods to a questionnaire given to the exporter under subsection 269TC(8) do not provide a reasonable basis for determining that paragraphs (a) and (b) of this subsection do not apply.

Note: Subsection 269TC(8) deals with the Commissioner giving an exporter of goods to Australia a questionnaire about evidence of whether or not paragraphs (a) and (b) of this subsection apply, with a specified period of at least 30 days for the exporter to answer the questions. Under subsection 269TC(9) the Commissioner may allow the exporter a further period for answering the questions.

- (5E) To be satisfied that the conditions in paragraph (5D)(a) or (b) exist, the Minister must have regard to the matters (if any) prescribed by the regulations.
- (5F) Without limiting the generality of subsection (5D), for the purpose of working out, under that subsection, the amount that is to be the normal value of goods exported to Australia, the Minister may determine that amount in a manner that would be open to the Minister under paragraph (4)(c), (d), (e) or (f) if subsection (4) were applicable.
- (5J) For the purposes of fulfilling Australia's international obligations under an international agreement, regulations may be made to disapply subsection (5D) to a country.
- (6) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the preceding subsections (other than subsection (5D)), the normal value of those goods is such amount as is determined by the Minister having regard to all relevant information.
- (7) For the purposes of this section, the Minister may disregard any information that he or she considers to be unreliable.
- (7A) The application of subsection (5D) to goods that are exported to Australia from a particular country does not preclude the application of other provisions of this section (other than subsections (4) and (5)) to other goods that are exported to Australia from that country.
- (8) Where the normal value of goods exported to Australia is the price paid or payable for like goods and that price and the export price of the goods exported:
 - (a) relate to sales occurring at different times; or
 - (b) are not in respect of identical goods; or
 - (c) are modified in different ways by taxes or the terms or circumstances of the sales to which they relate;

that price paid or payable for like goods is to be taken to be such a price adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price.

- (9) Where the normal value of goods exported to Australia is to be ascertained in accordance with paragraph (2)(c) or (4)(e), the Minister must make such adjustments, in determining the costs to be determined under that paragraph, as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.

(10) Where:

- (a) the actual country of export of goods exported to Australia is not the country of origin of the goods; and
- (b) the Minister is of the opinion that the normal value of the goods should be ascertained for the purposes of this Part as if the country of origin were the country of export;

he or she may direct that the normal value of the goods is to be so ascertained.

(11) For the purposes of subsection (10), the country of origin of goods is:

- (a) in the case of unmanufactured raw products—the country of which they are products; or
- (b) in any other case—the country in which the last significant process in the manufacture or production of the goods was performed.

(14) If:

- (a) application is made for a dumping duty notice; and
- (b) goods the subject of the application are exported to Australia; but
- (c) the volume of sales of like goods for home consumption in the country of export by the exporter or another seller of like goods is less than 5% of the volume of goods the subject of the application that are exported to Australia by the exporter;

the volume of sales referred to in paragraph (c) is taken, for the purposes of paragraph (2)(a), to be a low volume unless the Minister is satisfied that it is still large enough to permit a proper comparison for the purposes of assessing a dumping margin under section 269TACB.

...

269TACB Working out whether dumping has occurred and levels of dumping

(1) If:

- (a) application is made for a dumping duty notice; and
- (b) export prices in respect of goods the subject of the application exported to Australia during the investigation period have been established in accordance with section 269TAB; and
- (c) corresponding normal values in respect of like goods during that period have been established in accordance with section 269TAC;

the Minister must determine, by comparison of those export prices with those normal values, whether dumping has occurred.

(2) In order to compare those export prices with those normal values, the Minister may, subject to subsection (3):

- (a) compare the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period; or
- (aa) use the method of comparison referred to in paragraph (a) in respect of parts of the investigation period as if each of these parts were the whole of the investigation period; or
- (b) compare the export prices determined 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
- (c) use:
 - (i) the method of comparison referred to in paragraph (a) in respect of a part or parts of the investigation period as if the part or each of these parts were the whole of the investigation period; and
 - (ii) the method of comparison referred to in paragraph (b) in respect of another part or other parts of the investigation period as if that other part or each of these other parts were the whole of the investigation period.

(2A) If paragraph (2)(aa) or (c) applies:

- (a) each part of the investigation period referred to in the paragraph must not be less than 1 month; and
- (b) the parts of the investigation period as referred to in paragraph (2)(aa), or as referred to in subparagraphs (2)(c)(i) and (ii), must together comprise the whole of the investigation period.

(3) If the Minister is satisfied:

- (a) that the export prices differ significantly among different purchasers, regions or periods; and
- (b) that those differences make the methods referred to in subsection (2) inappropriate for use in respect of a period constituting the whole or a part of the investigation period;

the Minister may, for that period, compare the respective export prices determined in relation to individual transactions during that period with the weighted average of corresponding normal values over that period.

(4) If, in a comparison under subsection (2), the Minister is satisfied that the weighted average of export prices over a period is less than the weighted average of corresponding normal values over that period:

- (a) the goods exported to Australia during that period are taken to have been dumped; and
- (b) the dumping margin for the exporter concerned in respect of those goods and that period is the difference between those weighted averages.

(4A) To avoid doubt, a reference to a period in subsection (4) includes a reference to a part of the investigation period.

(5) If, in a comparison under subsection (2), the Minister is satisfied that an export price in respect of an individual transaction during the investigation period is less than the corresponding normal value:

- (a) the goods exported to Australia in that transaction are taken to have been dumped; and

- (b) the dumping margin for the exporter concerned in respect of those goods and that transaction is the difference between that export price and that normal value.
- (6) If, in a comparison under subsection (3), the Minister is satisfied that the export prices in respect of particular transactions during the investigation period are less than the weighted average of corresponding normal values during that period:
- (a) the goods exported to Australia in each such transaction are taken to have been dumped; and
 - (b) the dumping margin for the exporter concerned in respect of those goods is the difference between each relevant export price and the weighted average of corresponding normal values.
- (10) Any comparison of export prices, or weighted average of export prices, with any corresponding normal values, or weighted average of corresponding normal values, must be worked out in respect of similar units of goods, whether determined by weight, volume or otherwise.

269TACC Working out whether a financial contribution or income or price support confers a benefit

- (1) Subject to subsections (2) and (3), the question whether a financial contribution or income or price support confers a benefit is to be determined by the Minister having regard to all relevant information.
- (2) A direct financial payment received from any of the following is taken to confer a benefit:
 - (a) a government of a country;
 - (b) a public body of a country;
 - (c) a public body of which a government of a country is a member;
 - (d) a private body entrusted or directed by a government of a country or by such a public body to carry out a governmental function.

Guidelines for financial contributions

- (3) In determining whether a financial contribution confers a benefit, the Minister must have regard to the following guidelines:
 - (a) the provision of equity capital from a government or body referred to in subsection (2) does not confer a benefit unless the decision to provide the capital is inconsistent with normal investment practice of private investors in the country concerned;
 - (b) the making of a loan by a government or body referred to in subsection (2) does not confer a benefit unless the loan requires the enterprise receiving the loan to repay a lesser amount than would be required for a comparable commercial loan which the enterprise could actually obtain;
 - (c) the guarantee of a loan by a government or body referred to in subsection (2) does not confer a benefit unless the enterprise receiving the guarantee is required to repay on the loan a lesser amount than would be required for a comparable commercial loan without that guarantee;
 - (d) the provision of goods or services by a government or body referred to in subsection (2) does not confer a benefit unless the goods or services are provided for less than adequate remuneration;

- (e) the purchase of goods or services by a government or body referred to in subsection (2) does not confer a benefit unless the purchase is made for more than adequate remuneration.
- (4) For the purposes of paragraphs (3)(d) and (e), the adequacy of remuneration in relation to goods or services is to be determined having regard to prevailing market conditions for like goods or services in the country where those goods or services are provided or purchased.

269TACD Amount of countervailable subsidy

- (1) If the Minister is satisfied that a countervailable subsidy has been received in respect of goods, the amount of the subsidy is an amount determined by the Minister in writing.
- (2) After the amount of the countervailable subsidy received in respect of goods has been worked out, the Minister must, if that subsidy is not quantified by reference to a unit of those goods determined by weight, volume or otherwise, work out how much of that amount is properly attributable to each such unit.

269TAE Material injury to industry

- (1) In determining, for the purposes of section 269TG or 269TJ, whether material injury to an Australian industry has been or is being caused or is threatened or would or might have been caused, or whether the establishment of an Australian industry has been materially hindered, because of any circumstances in relation to the exportation of goods to Australia from the country of export, the Minister may, without limiting the generality of that section but subject to subsections (2A) to (2C), have regard to:
 - (aa) if the determination is being made for the purposes of section 269TG—the size of the dumping margin, or of each of the dumping margins, worked out in respect of goods of that kind that have been exported to Australia and dumped; and
 - (ab) if the determination is being made for the purposes of section 269TJ—particulars of any countervailable subsidy received in respect of goods of that kind that have been exported to Australia; and
 - (a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export; and
 - (b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export; and
 - (c) any change or likely change, during a particular period, in the proportion that:
 - (i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or
 - (ii) the quantity of goods of that kind, or like goods, produced or manufactured in the Australian industry and sold or consumed in Australia;
 bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia; and
 - (d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export; and
 - (e) the difference between:

- (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and
 - (ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia; and
 - (f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and
 - (g) any effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the Australian industry; and
 - (h) if the determination is being made for the purposes of section 269TJ and the goods are agricultural products—whether the exportation of goods of that kind to Australia from the country of export in those circumstances has given or is likely to give rise to a need for financial or other support, or an increase in financial or other support, for the Australian industry from the Commonwealth Government.
- (2) In determining, for the purposes of section 269TH or 269TK, whether material injury to an industry in a third country has been or is being caused or is threatened or would or might have been caused because of any circumstances in relation to the exportation of goods to Australia from the country of export, the Minister may, without limiting the generality of that section but subject to subsections (2A) to (2C), have regard to:
- (aa) if the determination is being made for the purposes of section 269TH—the size of the dumping margin, or of each of the dumping margins, worked out in respect of goods of that kind that have been exported to Australia and dumped; and
 - (ab) if the determination is being made for the purposes of section 269TK—particulars of any countervailable subsidy received in respect of goods of that kind that have been exported to Australia; and
 - (a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export; and
 - (b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export; and
 - (c) any change or likely change, during a particular period, in the proportion that:
 - (i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or
 - (ii) the quantity of goods of that kind, or like goods, produced or manufactured in the third country and sold or consumed in Australia;
 bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia; and
 - (d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export; and
 - (e) the difference between:

- (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the third country and sold in Australia; and
 - (ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia; and
 - (f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the third country and sold in Australia; and
 - (g) any effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the producer or manufacturer in the third country.
- (2A) In making a determination in relation to the exportation of goods to Australia for the purposes referred to in subsection (1) or (2), the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as:
- (a) the volume and prices of imported like goods that are not dumped; or
 - (b) the volume and prices of importations of like goods that are not subsidised; or
 - (c) contractions in demand or changes in patterns of consumption; or
 - (d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or
 - (e) developments in technology; or
 - (f) the export performance and productivity of the Australian industry;
- and any such injury or hindrance must not be attributed to the exportation of those goods.
- (2AA) A determination for the purposes of subsection (1) or (2) must be based on facts and not merely on allegations, conjecture or remote possibilities.
- (2B) In determining:
- (a) for the purposes of subsection (1), whether or not material injury is threatened to an Australian industry; or
 - (b) for the purposes of subsection (2), whether or not material injury is threatened to an industry in a third country;
- because of the exportation of goods into the Australian market, the Minister must take account only of such changes in circumstances, including changes of a kind determined by the Minister, as would make that injury foreseeable and imminent unless dumping or countervailing measures were imposed.
- (2C) In determining, for the purposes referred to in subsection (1) or (2), the effect of the exportations of goods to Australia from different countries of export, the Minister should consider the cumulative effect of those exportations only if the Minister is satisfied that:
- (a) each of those exportations is the subject of an investigation; and
 - (b) either:

- (i) all the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on the same day; or
 - (ii) the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on different days but the investigation periods for all the investigations of those exportations overlap significantly; and
 - (c) if the determination is being made for the purposes of section 269TG or 269TH—the dumping margin worked out under section 269TACB for the exporter for each of the exportations is at least 2% of the export price or weighted average of export prices used to establish that dumping margin; and
 - (d) if the determination is being made for the purposes of section 269TG or 269TH—for each application, the volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period (as defined in subsection 269TDA(17)) from the country of export and dumped is not taken to be negligible for the purposes of subsection 269TDA(3) because of subsection 269TDA(4); and
 - (da) if the determination is being made for the purposes of section 269TJ or 269TK:
 - (i) the amount of the countervailable subsidy in respect of the goods the subject of each of the exportations exceeds the negligible level of countervailable subsidy worked out under subsection 269TDA(16); and
 - (ii) the volume of each of those exportations is not negligible; and
 - (e) it is appropriate to consider the cumulative effect of those exportations, having regard to:
 - (i) the conditions of competition between those goods; and
 - (ii) the conditions of competition between those goods and like goods that are domestically produced.
- (3) A reference in subsection (1) or (2) to the relevant economic factors in relation to an Australian industry, or in relation to an industry in a third country, in relation to goods of a particular kind exported to Australia is a reference to:
- (a) the quantity of goods of that kind, or like goods, produced or manufactured in the industry; and
 - (b) the degree of utilization of the capacity of the industry to produce or manufacture goods of that kind, or like goods; and
 - (c) the quantity of goods of that kind, or like goods, produced or manufactured in the industry:
 - (i) for which there are sales or forward orders; or
 - (ii) which are held as stocks; and
 - (d) the value of sales of, or forward orders for, goods of that kind, or like goods, produced or manufactured in the industry; and
 - (e) the level of profits earned in the industry, that are attributable to the production or manufacture of goods of that kind, or like goods; and
 - (f) the level of return on investment in the industry; and

- (g) cash flow in the industry; and
- (h) the number of persons employed, and the level of wages paid to persons employed, in the industry in relation to the production or manufacture of goods of that kind, or like goods; and
- (ha) the terms and conditions of employment (including the number of hours worked) of persons employed in the industry in relation to the production or manufacture of goods of that kind, or like goods; and
- (j) the share of the market in Australia for goods of that kind, or like goods, that is held by goods of that kind, or like goods, produced or manufactured in the industry; and
- (k) the ability of persons engaged in the industry, to raise capital in relation to the production or manufacture of goods of that kind, or like goods; and
- (m) investment in the industry.

...

Division 2 – Consideration of anti-dumping matters by the Commissioner

269TB Application for action under Dumping Duty Act

- (1) Where:
- (a) a consignment of goods:
 - (i) has been imported into Australia;
 - (ii) is likely to be imported into Australia; or
 - (iii) may be imported into Australia, being like goods to goods to which subparagraph (i) or (ii) applies;
 - (b) there is, or may be established, an Australian industry producing like goods; and
 - (c) a person believes that there are, or may be, reasonable grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods in the consignment;

that person may, by application in writing lodged with the Commissioner, request that the Minister publish that notice in respect of the goods in the consignment.

...

- (2C) A notification by the Commissioner under subsection (2B) must include an invitation to consult with the Commissioner in relation to whether:
- (a) any countervailable subsidies exist; and
 - (b) any such subsidies, if found to exist, are causing or are likely to cause material injury of a kind referred to in paragraph 269TJ(1)(b) or 269TK(1)(b);

with the aim of arriving at a mutually agreed solution.

...

- (4) An application under subsection (1) or (2) or a notice under subsection (3) withdrawing such an application must:
- (a) be in writing; and

- (b) be in a form approved by the Commissioner for the purposes of this section; and
- (c) contain such information as the form requires;
- (d) be signed in the manner indicated in the form;
- (e) in the case of an application under subsection (1)—be supported by a sufficient part of the Australian industry; and
- (f) be lodged in the manner approved under section 269SMS.

...

- (6) An application under subsection (1) in relation to a consignment of goods is taken to be supported by a sufficient part of the Australian industry if the Commissioner is satisfied that persons (including the applicant) who produce or manufacture like goods in Australia and who support the application:
 - (a) account for more than 50% of the total production or manufacture of like goods produced or manufactured by that portion of the Australian industry that has expressed either support for, or opposition to, the application; and
 - (b) account for not less than 25% of the total production or manufacture of like goods in Australia.

269TC Consideration of application

- (1) The Commissioner shall, within 20 days after receiving an application under subsection 269TB(1) in respect of goods, examine the application and, if the Commissioner is not satisfied, having regard to the matters contained in the application and to any other information that the Commissioner considers relevant:
 - (a) that the application complies with subsection 269TB(4); or
 - (b) that there is, or is likely to be established, an Australian industry in respect of like goods; or
 - (c) that there appear to be reasonable grounds:
 - (i) for the publication of a dumping duty notice or a countervailing duty notice, as the case requires, in respect of the goods the subject of the application; or
 - (ii) for the publication of such a notice upon the importation into Australia of such goods;

he or she shall reject the application and inform the applicant, by notice in writing, accordingly.

- (2) The Commissioner shall, within 20 days after receiving an application by the Government of a country under subsection 269TB(2) in respect of goods, examine the application and, if the Commissioner is not satisfied, having regard to the matters contained in the application and to any other information that the Commissioner considers relevant:
 - (a) that the application complies with subsection 269TB(4); or
 - (b) that there is a producer or manufacturer of like goods in that country who exports such goods to Australia; or
 - (c) that there appear to be reasonable grounds:

- (i) for the publication of a dumping duty notice or a countervailing duty notice, as the case requires, in respect of the goods the subject of the application; or
- (ii) for the publication of such a notice upon the importation into Australia of such goods;

he or she shall reject the application and inform the applicant, by notice in writing, accordingly.

(2A) If an applicant, after lodging an application under section 269TB, decides to give the Commissioner further information in support of that application without having been requested to do so:

- (a) the information must be lodged with the Commissioner, in writing, in the manner in which applications under that section must be lodged; and
- (b) the information is taken to have been received by the Commissioner when the information is first received by a Commission staff member doing duty in relation to dumping applications; and
- (c) this Part has effect as if:
 - (i) the application had included that further information; and
 - (ii) the application had only been lodged when that further information was lodged; and
 - (iii) the application had only been received when that further information was received.

(3) Where, in accordance with subsection (1) or (2), the Commissioner rejects an application, the notice informing the applicant of that rejection:

- (a) shall state the reasons why the Commissioner was not satisfied of one or more of the matters set out in that subsection; and
- (b) shall inform the applicant of the applicant's right, within 30 days of the receipt of the notice, to apply for a review of the Commissioner's decision by the Review Panel under Division 9.

(4) If the Commissioner decides not to reject an application under subsection 269TB(1) or (2) in respect of goods, the Commissioner must give public notice of the decision:

- (a) setting out particulars of goods the subject of the application; and
- (b) setting out the identity of the applicant; and
- (ba) setting out the countries of export known to be involved; and
- (bb) if the application is for a countervailing duty notice—also setting out the countries from which countervailable subsidisation is alleged to have been received; and
- (bc) setting a date, which should be the date or estimated date of publication of the notice, as the date of initiation of the investigation; and
- (bd) indicating the basis on which dumping or countervailable subsidisation is alleged to have occurred; and
- (be) summarising the factors on which the allegation of injury or hindrance to the establishment of an industry is based; and
- (bf) indicating that a report will be made to the Minister:
 - (i) within 155 days after the date of initiation of the investigation; or

- (ii) within such longer period as the Minister allows under section 269ZHI;

on the basis of the examination of exportations to Australia of goods the subject of the application during a period specified in the notice as the investigation period in relation to the application; and

- (c) inviting interested parties to lodge with the Commissioner, within 37 days after the date of initiation of the investigation, submissions concerning the publication of the notice sought in the application; and
- (d) stating that if the Commissioner, in accordance with section 269TD, makes a preliminary affirmative determination in relation to the application, he or she may apply provisional measures, including the taking of securities under section 42, in respect of interim duty that may become payable on the importation of the goods the subject of the application; and
- (e) stating that:
 - (i) within 110 days after the date of initiation of the investigation; or
 - (ii) such longer period as the Minister allows under section 269ZHI;

the Commissioner, in accordance with section 269TDAA, will place on the public record a statement of the essential facts on which the Commissioner proposes to base a recommendation to the Minister; and

- (f) inviting interested parties to lodge with the Commissioner, within 20 days of that statement being placed on the public record, submissions in response to that statement; and
 - (g) indicating the address at which, or the manner in which, submissions under paragraph (c) or (f) can be lodged; and
 - (h) stating that if the Minister decides to publish or not to publish a dumping duty notice or a countervailing duty notice after considering the report referred to in paragraph (bf), certain persons will have the right to seek review of that decision in accordance with Division 9.
- (5) Information required to be included in the notice under subsection (4) may be included in a separate report to which the notice makes reference.
- (5A) The Commissioner cannot vary the length of the investigation period.
- (6) Despite the fact that a notice under this section specifies a particular period for interested parties to lodge submissions with the Commissioner, if the Commissioner is satisfied, by representation in writing by an interested party:
- (a) that a longer period is reasonably required for the party to make a submission; and
 - (b) that allowing a longer period will be practicable in the circumstances;
- the Commissioner may notify the party, in writing, that a specified further period will be allowed for the party to lodge a submission.
- (7) As soon as practicable after the Commissioner decides not to reject an application under section 269TB for a dumping duty notice or a countervailing duty notice, the Commissioner must ensure that a copy of the application, or of so much of the application as is not claimed to be confidential or to constitute information whose publication would adversely affect a person's business or commercial interests, is made available:

- (a) unless paragraph (b) applies—to all persons known to be exporters of goods the subject of the application and to the government of each country of export; or
 - (b) if the number of persons known to be exporters of goods the subject of the application is so large that it is not practicable to provide a copy of the application, or of so much of the application as is not the subject of such a claim, to each of them—to the government of each country of export and to each relevant trade association.
- (8) If the Commissioner is satisfied that a country whose exporters are nominated in an application for a dumping duty notice or a countervailing duty notice has an economy in transition, the Commissioner must, as soon as practicable after deciding not to reject the application:
- (a) give each nominated exporter from such a country a questionnaire about evidence of whether or not paragraphs 269TAC(5D)(a) and (b) apply; and
 - (b) inform each such exporter that the exporter has a specified period of not less than 30 days for answering questions in the questionnaire; and
 - (c) inform each such exporter that the investigation of the application will proceed on the basis that subsection 269TAC(5D) applies to the normal value of the exporter's goods that are the subject of the application if:
 - (i) the exporter does not give the answers to the Commissioner within the period; or
 - (ii) the exporter gives the answers to the Commissioner within the period but they do not provide a reasonable basis for determining that paragraphs 269TAC(5D)(a) and (b) do not apply.
- Note Paragraph 269TAC(5D)(a) or (b) applies if a government of the country of export significantly affects the selling price in that country of like goods to the goods that are the subject of the application.
- (9) Despite the fact that, under subsection (8), the Commissioner has informed an exporter given a questionnaire that the exporter has a particular period to answer the questions in the questionnaire, if the Commissioner is satisfied, by representation in writing by the exporter:
- (a) that a longer period is reasonably required for the exporter to answer the questions; and
 - (b) that allowing a longer period will be practicable in the circumstances;
- the Commissioner may notify the exporter, in writing, that a specified further period will be allowed for the exporter to answer the questions.
- (10) If, during an investigation in respect of goods the subject of an application under section 269TB, the Commissioner becomes aware of an issue as to whether a countervailable subsidy (other than one covered by the application) has been received in respect of the goods, the Commissioner may examine that issue as part of the investigation.

269TD Preliminary affirmative determinations

- (1) At any time not earlier than 60 days after the date of initiation of an investigation as to whether there are sufficient grounds for the publication of a dumping duty notice, or a countervailing duty notice, in respect of goods the subject of an application under section 269TB, the Commissioner may, if he or she is satisfied:
- (a) that there appears to be sufficient grounds for the publication of such a notice; or

(b) that it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation into Australia of such goods;

make a determination (*a preliminary affirmative determination*) to that effect.

- (2) Subject to subsection (3), in deciding whether to make such a preliminary affirmative determination, the Commissioner:
 - (a) must have regard to:
 - (i) the application concerned; and
 - (ii) any submissions concerning publication of the notice that are received by the Commissioner within 37 days after the date of initiation of the investigation; and
 - (b) may have regard to any other matters that the Commissioner considers relevant.
- (3) The Commissioner is not obliged to have regard to any submission that is received by the Commissioner after the end of the period referred to in subparagraph (2)(a)(ii) if to do so would, in the Commissioner's opinion, prevent the timely consideration of the question whether or not to make a preliminary affirmative determination.
- (4) If the Commissioner makes a preliminary affirmative determination:
 - (a) the Commissioner must give public notice of that determination; and
 - (b) the Commonwealth may, at the time that determination is made or at any later time during the investigation, require and take securities under section 42 in respect of interim duty that may become payable if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.
- (5) If the Commonwealth decides to require and take securities under subsection (4), the Commissioner must give public notice of that decision.

269TDAA Statement of essential facts in relation to investigation of application under section 269TB

- (1) The Commissioner must, within 110 days after the date of initiation of an investigation arising from an application under section 269TB or such longer period as the Minister allows under section 269ZHI, place on the public record a statement of the facts (*the statement of essential facts*) on which the Commissioner proposes to base a recommendation to the Minister in relation to that application.
- (2) Subject to subsection (3), in formulating the statement of essential facts, the Commissioner:
 - (a) must have regard to:
 - (i) the application concerned; and
 - (ii) any submissions concerning publication of the notice that are received by the Commissioner within 37 days after the date of initiation of the investigation; and
 - (b) may have regard to any other matters that the Commissioner considers relevant.
- (3) The Commissioner is not obliged to have regard to a submission received by the Commissioner after the end of the period referred to in subparagraph (2)(a)(ii) if

to do so would, in the Commissioner's opinion, prevent the timely placement of the statement of essential facts on the public record.

269TDA Termination of investigations

Commissioner must terminate if all dumping margins are negligible

- (1) If:
- (a) application is made for a dumping duty notice; and
 - (b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the Commissioner is satisfied that:
 - (i) there has been no dumping by the exporter of any of those goods; or
 - (ii) there has been dumping by the exporter of some or all of those goods, but the dumping margin for the exporter, or each such dumping margin, worked out under section 269TACB, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%;

the Commissioner must terminate the investigation so far as it relates to the exporter.

Commissioner must terminate if countervailable subsidisation is negligible

- (2) If:
- (a) application is made for a countervailing duty notice; and
 - (b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the Commissioner is satisfied that:
 - (i) no countervailable subsidy has been received in respect of any of those goods; or
 - (ii) a countervailable subsidy has been received in respect of some or all of those goods but it never, at any time during the investigation period, exceeded the negligible level of countervailable subsidy under subsection (16);

the Commissioner must terminate the investigation so far as it relates to the exporter.

Commissioner must terminate if negligible volumes of dumping are found

- (3) If:
- (a) application is made for a dumping duty notice; and
 - (b) in an investigation for the purposes of the application the Commissioner is satisfied that the total volume of goods the subject of the application:
 - (i) that have been, or may be, exported to Australia over a reasonable examination period from a particular country of export; and
 - (ii) that have been, or may be, dumped;

is negligible;

the Commissioner must terminate the investigation so far as it relates to that country.

What is a negligible volume of dumped goods?

- (4) For the purpose of subsection (3), the total volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped is taken to be a negligible volume if:
- (a) when expressed as a percentage of the total Australian import volume, it is less than 3%; and
 - (b) subsection (5) does not apply in relation to those first mentioned goods.

Aggregation of volumes of dumped goods

- (5) For the purposes of subsection (4), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped if:
- (a) the volume of such goods that have been, or may be, so exported from that country and dumped, when expressed as a percentage of the total Australian import volume, is less than 3%; and
 - (b) the volume of goods the subject of the application that have been, or may be, exported to Australia over that period from another country of export and dumped, when expressed as a percentage of the total Australian import volume, is also less than 3%; and
 - (c) the total volume of goods the subject of the application that have been, or may be, exported to Australia over that period from the country to which paragraph (a) applies, and from all countries to which paragraph (b) applies, and dumped, when expressed as a percentage of the total Australian import volume, is more than 7%.

Negligible dumping margins to count in determining volume

- (6) The fact that the dumping margin, or each of the dumping margins, in relation to a particular exporter, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%, does not prevent exports by that exporter being taken into account:
- (a) in working out the total volume of goods that have been, or may be, exported from a country of export and dumped; and
 - (b) in aggregating, for the purposes of subsection (5), the volumes of goods that have been, or may be, exported from that country of export and other countries of export and dumped.

Commissioner must terminate if negligible volumes of countervailable subsidisation are found

- (7) If:
- (a) application is made for a countervailing duty notice; and
 - (b) in an investigation for the purposes of the application, the Commissioner is satisfied that the total volume of goods the subject of the application:
 - (i) that have been, or may be, exported to Australia from a particular country of export during a reasonable examination period; and
 - (ii) in respect of which a countervailable subsidy has been, or may be, received;
- is negligible;

the Commissioner must terminate the investigation so far as it relates to that country.

What is a negligible volume of subsidised goods?

- (8) For the purposes of subsection (7), the total volume of goods the subject of the application for a countervailing duty notice that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has been received is taken to be a negligible volume if:
- (a) that country of export is not a developing country and that total volume, when expressed as a percentage of the total Australian import volume, is less than 3%; or
 - (b) that country of export is a developing country and that total volume, when expressed as a percentage of the total Australian import volume, is less than 4%;

and subsections (9), (10) and (11) do not apply in relation to those first mentioned goods.

Aggregation of volumes of subsidised goods from countries other than developing countries

- (9) For the purposes of subsection (8), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has been, or may be, received, if:
- (a) the country of export is not a developing country; and
 - (b) the volume of such goods:
 - (i) that have been, or may be, exported to Australia over that period from that country; and
 - (ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is less than 3%; and

- (c) the volume of goods the subject of the application:
 - (i) that have been, or may be, exported to Australia over that period from another country that is not a developing country; and
 - (ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is also less than 3%; and

- (d) the total volume of goods the subject of the application:
 - (i) that have been, or may be, exported to Australia over that period from the country to which paragraph (b) applies and from all countries to which paragraph (c) applies; and
 - (ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is more than 7%.

Aggregation of volumes of subsidised goods from developing countries

(10) For the purposes of subsection (8), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has been, or may be, received if:

- (a) the country of export is a developing country; and
- (b) the volume of such goods:
 - (i) that have been, or may be, exported to Australia over that period from that country; and
 - (ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is less than 4%; and

- (c) the volume of goods the subject of the application:
 - (i) that have been, or may be, exported to Australia over that period from another country that is a developing country; and
 - (ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is also less than 4%; and

- (d) the total volume of goods the subject of the application:
 - (i) that have been, or may be, exported to Australia over that period from the country to which paragraph (b) applies and from all countries to which paragraph (c) applies; and
 - (ii) in respect of which a countervailable subsidy has been, or may be received;

when expressed as a percentage of the total Australian import volume, is more than 9%.

Aggregation of volumes of subsidised goods from member countries that are developing countries

(11) For the purposes of subsection (8), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has been, or may be, received if:

- (a) the country of export is a member country and a developing country; and
- (b) the volume of such goods:
 - (i) that have been, or may be exported to Australia over that period from that country; and
 - (ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is less than 4%; and

- (c) the volume of goods the subject of the application:

- (i) that have been, or may be, exported to Australia over that period from another member country that is a developing country; and
- (ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is less than 4%; and

- (d) the volume of goods the subject of the application:
 - (i) that have been, or may be, exported to Australia over that period from the country to which paragraph (b) applies and from all countries to which paragraph (c) applies; and
 - (ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is more than 9%.

Negligible countervailable subsidies to count in determining volume

- (12) The fact that the level of countervailable subsidy that has been, or may be, received in respect of goods that have been, exported, or may be exported, to Australia from a country of export is a negligible level under subsection (16) does not prevent exports from that country being taken into account:
 - (a) in working out the total volume of goods that have been, or may be, exported from a country of export and in respect of which a countervailable subsidy has been, or may be, payable; and
 - (b) in aggregating, for the purposes of subsection (9), (10) or (11), volumes of goods that have been, or may be, exported to Australia from that country and other countries and in respect of which a countervailing subsidy has been, or may be, received.

Commissioner must terminate dumping investigation if export causes negligible injury etc.

- (13) Subject to subsection (13A), if:
 - (a) application is made for a dumping duty notice; and
 - (b) in an investigation, for the purposes of the application, of goods the subject of the application that have been, or may be, exported to Australia from a particular country of export, the Commissioner is satisfied that the injury, if any, to an Australian industry or an industry in a third country, or the hindrance, if any, to the establishment of an Australian industry, that has been, or may be, caused by that export is negligible;

the Commissioner must terminate the investigation so far as it relates to that country.

(13A) If, in relation to the investigation referred to in subsection (13), the Commissioner, in accordance with subsection (14B), considers the cumulative effect of exportations of goods to Australia from 2 or more countries of export, then the following apply in relation to those countries:

- (a) if the Commissioner is not satisfied that the injury to an Australian industry or an industry in a third country, or the hindrance to the establishment of an Australian industry, that has been, or may be, caused by those exports is negligible—subsection (13) does not apply in relation to those countries;

(b) if the Commissioner is satisfied that such injury or hindrance that has been, or may be, caused by those exports is negligible—the Commissioner must terminate the investigation so far as it relates to those countries.

Note: If the investigation also covers exports of goods from a country that was not part of the cumulation consideration because those exports did not satisfy the criteria in subsection (14B), then the Commissioner will consider whether subsection (13) applies to that country.

Commissioner must terminate countervailable subsidy investigation if export causes negligible injury

(14) Subject to subsection (14A), if:

- (a) application is made for a countervailing duty notice; and
- (b) in an investigation, for the purpose of the application, of goods the subject of the application that have been, or may be, exported to Australia from a particular country of export, the Commissioner is satisfied that the injury, if any, to an Australian industry or an industry in a third country that has been, or may be, caused by that export is negligible;

the Commissioner must terminate the investigation so far as it relates to that country.

(14A) If, in relation to the investigation referred to in subsection (14), the Commissioner, in accordance with subsection (14B), considers the cumulative effect of exportations of goods to Australia from 2 or more countries of export, then the following apply in relation to those countries:

- (a) if the Commissioner is not satisfied that the injury to an Australian industry or an industry in a third country that has been, or may be, caused by those exports is negligible – subsection (14) does not apply in relation to those countries;
- (b) if the Commissioner is satisfied that such injury that has been, or may be, caused by those exports is negligible – the Commissioner must terminate the investigation so far as it relates to those countries.

Note: if the investigation also covers exports of goods from a country that was not part of the cumulation consideration because those exports did not satisfy the criteria in subsection (14B), then the Commissioner will consider whether subsection (14) applies to that country.

Cumulative assessment of injury or hindrance

(14B) For the purpose of subsection (13A) or (14A), the Commissioner must consider the cumulative effect of exportations of goods to Australia from 2 or more countries of export if the Commissioner is satisfied that:

- (a) each of those exportations is the subject of an investigation; and

- (b) either:
 - (i) all the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on the same day; or
 - (ii) the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on different days but the investigation periods for all the investigations of those exportations overlap significantly; and
- (c) for the purposes of subsection (13A)—the dumping margin worked out under section 269TACB for the exporter for each of the exportations is at least 2% of the export price or weighted average of export prices used to establish that dumping margin; and
- (d) for the purposes of subsection (13A)—for each application, the volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period (as defined in subsection 269TDA(17)) from the country of export and dumped is not taken to be negligible for the purposes of subsection 269TDA(3) because of subsection 269TDA(4); and
- (e) for the purposes of subsection (14A):
 - (i) the amount of the countervailable subsidy in respect of the goods the subject of each of the exportations exceeds the negligible level of countervailable subsidy worked out under subsection 269TDA(16); and
 - (ii) the volume of each of those exportations is not negligible; and
- (f) it is appropriate to consider the cumulative effect of those exportations, having regard to:
 - (i) the conditions of competition between those goods; and
 - (ii) the conditions of competition between those goods and like goods that are domestically produced.

Commissioner must give public notice of termination decisions

- (15) If the Commissioner decides to terminate an investigation so far as it relates to a particular exporter or country of export, the Commissioner must:
 - (a) give public notice of that decision; and
 - (b) ensure that:
 - (i) in the case of an exporter, a copy of the notice is sent to the applicant, the exporter and the government of the country of export; or
 - (ii) in the case of a country of export, a copy of the notice is sent to the applicant and the government of that country; and
 - (c) inform the applicant of the applicant's right, within 30 days after the first publication of the public notice, to apply for a review of the Commissioner's decision by the Review Panel under Division 9.

Negligible countervailable subsidisation

- (16) For the purposes of this section, a countervailable subsidy received in respect of goods exported to Australia is negligible if:

- (a) the country of export is not a developing country and the subsidy, when expressed as a percentage of the export price of the goods, is less than 1%; or
- (b) the country of export is a developing country but not a special developing country and the subsidy, when expressed as a percentage of the export price of the goods, is not more than 2%; or
- (c) the country of export is a special developing country and the subsidy, when expressed as a percentage of the export price of the goods, is not more than 3%.

Definition—reasonable examination period

(17) In this section:

reasonable examination period, in relation to an application for a dumping duty notice or a countervailing duty notice in respect of goods, means a period comprising:

- (a) the whole or a substantial part of the investigation period; or
- (b) any period after the end of the investigation period that is taken into account for the purpose of considering possible future importations of goods the subject of the application.

total Australian import volume, in relation to a volume of goods the subject of an application for a dumping duty notice or a countervailing duty notice that have been, or may be, exported to Australia from a particular country during a period, means the total volume of all goods the subject of the application and like goods that have been, or may be, exported to Australia from all countries during that period.

Customs (International Obligations) Regulation 2015

Part 8—Anti dumping duties

Division 1—Ordinary course of trade

43 Determination of cost of production or manufacture

- (1) For subsection 269TAAD(5) of the Act, this section sets out:
 - (a) the manner in which the Minister must, for paragraph 269TAAD(4)(a) of the Act, work out an amount (the amount) to be the cost of production or manufacture of like goods in a country of export; and
 - (b) factors that the Minister must take account of for that purpose.
- (2) If:
 - (a) an exporter or producer of like goods keeps records relating to the like goods; and
 - (b) the records:
 - (i) are in accordance with generally accepted accounting principles in the country of export; and
 - (ii) reasonably reflect competitive market costs associated with the production or manufacture of like goods;

the Minister must work out the amount by using the information set out in the records.

- (3) The Minister must take account of the information available to the Minister about the allocation of costs in relation to like goods, in particular to establish:
 - (a) appropriate amortisation and depreciation periods; and
 - (b) allowances for capital expenditures and other development costs.
- (4) For subsection (3), the information includes information given by the exporter or producer of the goods mentioned in subsection (1) that demonstrates that the exporter or producer of the goods has historically used the method of allocation.
- (5) If:
 - (a) the Minister identifies a non recurring item of cost that benefits current production or future production (or both) of the goods mentioned in subsection (1); and
 - (b) the information mentioned in subsection (3) does not identify the item;the Minister must adjust the costs identified by the exporter or producer to take that item into account.
- (6) Subsection (7) applies if:
 - (a) the Minister identifies a circumstance in which costs, during the investigation period, are affected by start up operations; and
 - (b) the information mentioned in subsection (3) does not identify the circumstance.
- (7) The Minister must adjust the costs identified in the information:
 - (a) to take the circumstance into account; and
 - (b) to reflect:
 - (i) the costs at the end of the start up period; or
 - (ii) if the start up period extends beyond the investigation period—the most recent costs that can reasonably be taken into account by the Minister during the investigation.
- (8) For this section, the Minister may disregard any information that he or she considers to be unreliable.

44 Determination of administrative, selling and general costs

- (1) For subsection 269TAAD(5) of the Act, this section sets out:
 - (a) the manner in which the Minister must, for paragraph 269TAAD(4)(b) of the Act, work out an amount (the amount) to be the administrative, selling and general costs associated with the sale of like goods in a country of export; and
 - (b) factors that the Minister must take account of for that purpose.
- (2) If:
 - (a) an exporter or producer of like goods keeps records relating to the like goods; and
 - (b) the records:
 - (i) are in accordance with generally accepted accounting principles in the country of export; and

- (ii) reasonably reflect the administrative, general and selling costs associated with the sale of the like goods;

the Minister must work out the amount by using the information set out in the records.

- (3) If the Minister is unable to work out the amount by using the information mentioned in subsection (2), the Minister must work out the amount by:
 - (a) identifying the actual amounts of administrative, selling and general costs incurred by the exporter or producer in the production and sale of the same general category of goods in the domestic market of the country of export; or
 - (b) identifying the weighted average of the actual amounts of administrative, selling and general costs incurred by other exporters or producers in the production and sale of like goods in the domestic market of the country of export; or
 - (c) using any other reasonable method and having regard to all relevant information.
- (4) The Minister must take account of the information available to the Minister about the allocation of costs, in particular to establish:
 - (a) appropriate amortisation and depreciation periods; and
 - (b) allowances for capital expenditures and other development costs.
- (5) For subsection (4), the information includes information given by the exporter or producer of goods that demonstrates that the exporter or producer of the goods has historically used the method of allocation.
- (6) If:
 - (a) the Minister identifies a non recurring item of cost that benefits current production or future production (or both) of goods; and
 - (b) the information mentioned in subsection (4) does not identify the item;the Minister must adjust the costs identified by the exporter or producer to take that item into account.
- (7) Subsection (8) applies if:
 - (a) the Minister identifies a circumstance in which costs, during the investigation period, are affected by start up operations; and
 - (b) the information mentioned in subsection (4) does not identify the circumstance.
- (8) The Minister must adjust the costs identified in the information:
 - (a) to take the circumstance into account; and
 - (b) to reflect:
 - (i) the costs at the end of the start up period; or
 - (ii) if the start up period extends beyond the investigation period—the most recent costs that can reasonably be taken into account by the Minister during the investigation.
- (9) For this section, the Minister may disregard any information that he or she considers to be unreliable.

- (10) For paragraph (3)(b), subsection 269T(5A) of the Act sets out how to work out the weighted average.

Division 2—Normal value of goods

45 Determination of profit

- (1) For subsection 269TAC(5B) of the Act, this section sets out:
- (a) the manner in which the Minister must, for subparagraph 269TAC(2)(c)(ii) or (4)(e)(ii) of the Act, work out an amount (the amount) to be the profit on the sale of goods; and
 - (b) factors that the Minister must take account of for that purpose.
- (2) The Minister must, if reasonably practicable, work out the amount by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.
- (3) If the Minister is unable to work out the amount by using the data mentioned in subsection (2), the Minister must work out the amount by:
- (a) identifying the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of export; or
 - (b) identifying the weighted average of the actual amounts realised by other exporters or producers from the sale of like goods in the domestic market of the country of export; or
 - (c) using any other reasonable method and having regard to all relevant information.
- (4) However, if:
- (a) the Minister uses a method of calculation under paragraph (3)(c) to work out an amount representing the profit of the exporter or producer of the goods; and
 - (b) the amount worked out exceeds the amount of profit normally realised by other exporters or producers on sales of goods of the same general category in the domestic market of the country of export;
- the Minister must disregard the amount by which the amount worked out exceeds the amount of profit normally realised by the other exporters or producers.
- (5) For this section, the Minister may disregard any information that he or she considers to be unreliable.
- (6) For paragraph (3)(b), subsection 269T(5A) of the Act sets out how to work out the weighted average.

46 Determining whether conditions exist—matters to which the Minister must have regard

- (1) For subsection 269TAC(5E) of the Act, the matters are set out in the following table.

Matters to which the Minister must have regard	
Item	Matter
1	Whether the entity makes decisions about prices, costs, inputs, sales and investments: <ol style="list-style-type: none"> (a) in response to market signals; and (b) without significant interference by a government of the country of export (see

Matters to which the Minister must have regard

Item Matter

subsection (2)).

2	Whether the entity keeps accounting records in accordance with generally accepted accounting standards in the country of export.
3	Whether the generally accepted accounting standards in the country of export are in line with: (a) international financial reporting standards developed by; and (b) international accounting standards adopted by; the International Accounting Standards Board. Note: The international financial reporting standards and international accounting standards could in 2015 be viewed on the International Accounting Standards Board's website (http://www.ifrs.org).
4	Whether the accounting records mentioned in item 2 are independently audited.
5	Whether the entity's production costs or financial situation is significantly affected by the influence that a government of the country of export had on the domestic price of goods in the country before the country's economy was an economy in transition.
6	Whether the country of export has laws relating to bankruptcy and property.
7	Whether the entity is subject to the bankruptcy and property laws mentioned in item 6.
8	Whether the entity is part of a market or sector in which the presence of an enterprise owned by a government of the country of export prevents market conditions from prevailing in that market or sector.
9	Whether utilities are supplied to the entity under contracts that reflect commercial terms and prices that are generally available throughout the economy of the country of export.
10	If the land on which the entity's facilities are built is owned by a government of the country of export—whether the conditions of rent are comparable to those in a market economy.
11	Whether the entity has the right to hire and dismiss employees and to fix the salaries of employees.

- (2) In assessing whether there is significant interference for paragraph (b) of item 1 in the table in subsection (1), the Minister must have regard to the following:
- (a) whether a genuinely private company or party holds the majority shareholding in the entity;
 - (b) if officials of a government of the country of export hold positions on the board of the entity—whether those officials are a minority of the members of the board;
 - (c) if officials of a government of the country of export hold significant management positions within the entity—whether those officials are a minority of the persons holding significant management positions;
 - (d) whether the entity's ability to carry on business activities in the country of export is affected by:
 - (i) a restriction on selling in the domestic market; or
 - (ii) the potential for the right to do business being withdrawn other than under contractual terms; or

- (iii) if the entity is a joint venture in which one of the parties is a foreign person, or is carried on in the form of such a joint venture—the ability of the foreign person to export profits and repatriate capital invested;
 - (e) whether the entity’s significant production inputs (including raw materials, labour, energy and technology) are supplied:
 - (i) by enterprises that are owned or controlled by a government of the country of export; and
 - (ii) at prices that do not substantially reflect conditions found in a market economy.
- (3) In this section:
- entity, in relation to goods, means:
- (a) the exporter of the exported goods mentioned in subsection 269TAC(5D) of the Act; or
 - (b) if the exporter of the goods is not the producer of the goods, but the goods are produced in the country of export—the producer of the goods.

government, of a country, includes any level of government of the country.

47 Determination of value—countries to which subsection 269T(5D) of the Act does not apply

For subsection 269TAC(5J) of the Act, Schedule 2 prescribes countries to which subsection 269TAC(5D) of the Act does not apply.

Attachment 2: History of anti-dumping investigations on paper

<p>May 1993</p>	<p>In May 1993, Associated Pulp and Paper Mills (Paper Division) applied for publication of dumping duty notices in respect of exports of certain A4 copy paper from Austria, Brazil, Finland, France, Germany, Indonesia, South Africa and the USA.</p> <p>Australian Paper Manufacturers supported APPM's application. At that time, Tjiwi Kimia was the only exporter from Indonesia.</p>
<p>16 September 1993.</p>	<p>As a result of Customs' investigation and Preliminary Finding (No. 93/16 of 15 September 1993), provisional measures (securities) were imposed on A4 copy paper from Brazil, Finland, Germany, Indonesia, South Africa and USA. Customs' Preliminary Finding was referred to the Anti-Dumping Authority for review and recommendations to the Minister.</p>
<p>27 January 1994</p>	<p>ADA Report No. 119 was published.</p>
<p>17 February 1994</p>	<p>The Minister agreed to impose interim dumping duty on A4 copy paper from nominated exporters in Brazil, Finland, Germany, South Africa and USA and also accepted price undertakings from specific exporters in Indonesia, Finland and Brazil.</p> <p>Insofar as exports from Indonesia were concerned, the Minister accepted a price undertaking from the Indonesian exporter (and manufacturer), Tjiwi Kimia. The undertaking came into effect on 3 February 1994.</p> <p>Insofar as exports from Brazil and Finland were concerned, the Minister accepted a price undertaking from Champion Papel e Celulose Ltda and SPP Nemo S/A Commercial Exportadora of Brazil and Kymi Paper Mills of Finland. The undertakings for Brazil came into effect on 18 July 1994 and for Finland on 3 February 1994.</p> <p>For Finland the duties were confined to exports by a marketing association (known as the Finnpap Marketing Association) that organised export sales for several Finnish paper manufacturing companies.</p>
<p>1996</p>	<p>Customs conducted a review of anti-dumping measures on A4 copy paper from Brazil, Finland, Germany and the United States of America in 1996 (dumping report no. 96/016 (refers)). Customs found that the variable factors had altered.</p>

	<p>In view of the emergence of either new exporters or exporters undergoing name changes since the introduction of the anti-dumping measures on exports of A4 copy paper from Brazil, Finland and the USA, Customs recommended that country wide measures apply to these sources. However, these countrywide measures excluded the continuing price undertaking for UPM-Kymmene (formerly Kymi Paper Mills Ltd) from Finland.</p> <p>While UPM-Kymmene from Finland elected to continue their price undertaking at the revised level, both Champion and Nemo from Brazil declined to accept price undertakings at the revised levels. In this case, the two companies were aware that Customs would recommend that the Minister resume consideration of the matter from the earlier deferral and publish new dumping notices covering these companies.</p>
28 June 1996	Customs initiated a review of the price undertaking from Tjiwi Kimia of Indonesia.
1 November 1996	Customs published Report 96/13, which recommended that as Tjiwi Kimia had declined to accept the revised undertaking the Minister should impose dumping duties on those exports.
26 November 1996.	The Minister decided to impose interim dumping duties on future exports of A4 copy paper by Tjiwi Kimia. Subsequently, Tjiwi Kimia challenged the legal basis of the Minister's decision to sign the dumping duty notice. The Federal Court ordered, by consent, that the dumping duty notice and the Customs review report (96/13) be set aside and that Customs should reconsider the matter.
3 June 1997	Pending the outcome of the Minister's decision, Customs imposed securities from A4 copy paper imports from Tjiwi Kimia at the recommended normal value level established by the 1996 review investigations.
1 July 1997	Customs completed its reconsideration. (Dumping report no. 97/008 refers). Customs found the normal values, export prices and non-injurious prices applying to A4 copy paper exported from Indonesia by Tjiwi Kimia have altered and In view of the decision by Tjiwi Kimia not to renew the price undertaking at the recommended revised level, Customs recommended that the Minister resume consideration of anti-dumping action against the company and publish a dumping duty notice. Before the Minister responded to Customs' recommendation, Tjiwi Kimia offered a price undertaking at the revised level.
30 July 1997	After initially refusing, Tjiwi Kimia offered, and the minister accepted, a price undertaking at the increased level.
13 August 1997	Following an application by Tjiwi Kimia for release from its price undertaking, the ADA began a revocation inquiry. Both Tjiwi Kimia and Australian Paper mounted legal challenges as a result of this inquiry.

<p>5 December 1997</p>	<p>The ADA recommended to the then minister that Tjiwi Kimia be released from the price undertaking.</p> <p>The Minister did not act immediately on the ADA's recommendations. Tjiwi Kimia filed an application in the Federal Court challenging the Minister's inaction and sought an order that he proceed to make a decision on the basis of the ADA's report. The proceedings relating to this case were discontinued following the Full Federal Court's decision on Australian Paper's legal challenge.</p> <p>Australian Paper challenged the ADA's initiation of the revocation inquiry, arguing that there were no grounds for holding the inquiry. It was the ADA's position that the revised price undertaking was the original price undertaking with different terms and the ADA could hold its inquiry because, as required by legislation, more than 12 months had expired since the original undertaking was accepted.</p>
<p>7 July 1998</p>	<p>The dumping duty notices on A4 copy paper from certain exporters in Finland and the USA were revoked (refer ACDN No. 98/042). This followed a Federal Court decision (Australian Paper Ltd v. Anti-Dumping Authority - NG 841 of 1997) that held that - unless revoked - original dumping notices remained operative notwithstanding that they have been replaced by subsequent measures. This applied to the circumstances affecting exports from the USA where the original company specific dumping notices were replaced with a country-wide notice on 17 January 1997.</p> <p>For the dumping duty on exports from Finland, the original dumping duty notice was revoked because the nominated exporter, the Finnpap Marketing Association, was dissolved in early 1996 and had not exported for several years. (ACDN 98/42 refers)</p>
<p>6 August 1998</p>	<p>An application was received from APPL for the initiation of an investigation into the alleged dumping of uncoated white cut ream copy paper from Finland</p>
<p>17 August 1998</p>	<p>Prior to the decision of the Federal Court, Customs was of the understanding that the revised Tjiwi Kimia price undertaking was the original price undertaking with different terms and therefore was due to expire on 3 February 1998, five years after the original undertaking was accepted. With this understanding, Customs initiated an inquiry into whether the undertaking should be continued for another five years (a continuation inquiry).</p>
<p>17 August 1998</p>	<p>Following an application from Australian Paper Pty Ltd for the continuation of the duties on A4 copy paper from Finland, Indonesia, Brazil, Germany and South Africa, Customs initiated a continuation inquiry.</p>
<p>2 October 1998</p>	<p>The full bench of the Federal Court, however, held on that the revised Tjwia Kimia price undertaking was a 'new' undertaking that superseded the original undertaking and the ADA had no grounds to hold the inquiry because twelve months had not elapsed since the revised undertaking was accepted.</p> <p>With the Federal Court holding that the revised price undertaking was a 'new' price undertaking, it therefore will not expire until five years after the date it was accepted by the Minister, ie 30 July 2002.</p>

	<p>Thus the grounds for the continuation inquiry being conducted by Customs no longer existed and that part of the continuation inquiry relating to Indonesia and Finland was discontinued.</p> <p>The Federal Court held that a revision of a price undertaking resulted in a new price undertaking. The price undertakings by UPM-Kymmene and Tjiwi Kimia were revised in 1996 and 1997, respectively. As there was no earlier expiry provision made in the new undertakings, each commenced a new five-year cycle ending in 2001 (for UPM-Kymmene) and 2002 (for Tjiwi Kimia).</p>
23 October 1998	Tjiwi Kimia lodged an application for release from the price undertaking. .
12 November 1998	Customs commenced a review of dumping measures following an application by Tjiwi Kimia for release from the price undertaking.
15 January 1999	<p>Customs recommended to the Minister that measures in respect of Germany and South Africa be continued but that measures on exports from Brazil be discontinued. (Report No 3 refers) The report also recommended that the as Customs had found a change in the variable factors that the Minister should initiate a review of these measures.</p> <p>Because of the 2 October 1998 full bench of the Australian Federal Court decision (NG 193 of 1998) on a related case involving an appeal by APPL against a decision of the ADA. The effect of the decision excluded the price undertakings by UPM-Kymmene and Tjiwi Kimia from this continuation inquiry.</p>
22 January 1999	Customs recommended that the Minister take anti-dumping action against exports of A4 copy paper exported from Finland by all exporters (other than those exports by UPM-Kymmene Corporation which are already subject to anti-dumping measures). (Report No 4 refers)
5 March 1999	Following the recommendations in Report No3 Customs initiated a review at the direction of the Minister relating to exports from Nordland from Germany and Mondi Paper from South Africa.
14 May 1999	Customs submitted a report to the minister. (Dumping Report No. 5 refers) Customs recommended, due to an extraordinary change in circumstances beyond the control of Tjiwi Kimia, that the Minister indicate to Tjiwi Kimia that it is released from its undertaking and that the investigation of the need for a dumping duty notice covering Tjiwi Kimia be terminated. The minister referred the report back to Customs for consideration of certain matters. The re-consideration was suspended pending the outcome of court action by Tjiwi Kimia.
29 June 1999	At the direction of the Minister of Justice and Customs, Customs initiated an investigation into whether anti-dumping measures should be imposed on certain exports of A4 copy paper from Brazil. This investigation resulted from a successful legal challenge in the

	Federal Court which set aside the anti-dumping measures which applied to certain exports of A4 copy paper from Brazil.
9 August 1999	Customs published a report (Report No.9) of a review at the direction of the Minister relating to exports from Nordland from Germany and Mondi Paper from South Africa. Customs recommended that the measures be revised.
9 December 1999	Customs initiated an investigation into exports from Indonesia excluding Tjiwi Kimia.
13 January 2000	Customs terminated the investigation in respect of exports from Brazil due to negligible exports. (Trade Measures Report No 13 refers)
January 2000	The Federal Court ruled that Tjiwi Kimia's price undertaking expired in February 1999. A subsequent appeal by AP was dismissed. AP subsequently lodged an application against Tjiwi Kimia.
16 March 2000	Customs initiated an investigation against exports by Tjiwi Kimia and combined this with the current investigation against Indonesia.
18 August 2000	Report No 22 reported that Customs did not recommend to the Minister that that the Minister impose anti-dumping measures on A4 copy paper exported to Australia from Indonesia
4 July 2003	AP applied for measures to be imposed against exports from China.
4 July 2003	AP applied for continuation of measures against exports from Finland (except for UPM-Kymmene), Germany and South Africa.
25 July 2003	Customs considers that there are no grounds for the continuation of measures against exports from Finland, Germany and South Africa.
11 August 2003	Customs initiate investigation into exports from China.
27 November 2003	Customs terminate investigation due to no dumping.

ATTACHMENT 3: A COMPARISON OF RECENT OUTCOMES BETWEEN US AND AUSTRALIAN JURISDICTIONS

In order to distinguish the outcomes between US and Australian jurisdictions, Australian Case 225 was initiated on 10 October 2013 and covered the investigation period 1 July 2012 to 30 June 2013 (injury period from 1 January 2010). The case involved white uncoated A4 and A3 cut sheet paper ranging from 70 to 100 gsm (A4, 80gsm being the predominate product in the Australian market). The investigation included on-site verification and testing of major exporter and importer records. Based on the evidence before the Commission, the Commissioner found exports were not dumped or were dumped by a negligible margin and a negligible volume. As prescribed in Australia's anti-dumping legislation, the Commissioner must terminate the investigation where there has been no, or negligible (dumping margin of less than 2 per cent) dumping by exporters or if the volume of exports is below the actionable volume of 3 per cent.

In comparison, the recent US case involving uncoated paper exported from Brazil, China, Indonesia and Portugal wherein a final determination was made on 16 January 2016 is different in a number of respects. The case covered a different investigation period of 1 January 2014 to 31 December 2014. The case involved copy paper ranging from 40gsm to 150gms. Respondents to the investigation were largely uncooperative, unlike in the Australian case. Further, the US considers China to be a non-market economy. They estimated dumping margins and applied surrogate country prices (South African prices) in the preliminary determination on 26 August 2015. Authorities then undertook verification of the preliminary determinations ahead of the final determination. These differences in jurisdictional procedures give an insight to the complexities involved in comparing outcomes between jurisdictions.

ATTACHMENT 4: List of countervailable subsidies considered in US case

US

China [C-570-023] - Programs Determined to Be Countervailable

Policy Loans to the Paper Industry
 Provision of Calcium Carbonate for LTAR
 Provision of Caustic Soda for LTAR
 Provision of Coal for LTAR
 Preferential Income Tax Program for High or New Technology Enterprises\
 Preferential Income Tax Program for Comprehensive Utilisation Entitling Enterprise
 Tax Allowance for Special Equipment for Water and Energy-Saving Purchased by Enterprises
 VAT and Import Tariff Exemptions for Imported Equipment
 VAT Rebates on FIE Purchases of Chinese Made Equipment
 Subsidies for Energy Efficiency and Environmental Protection
 Support Fund for Environmental Protection Project - Rizaho City
 Support Fund for Environmental Protection Input
 Support Fund for Environmental Protection Project
 City Bonus for Export Activity from Finance Bureau
 Energy Efficiency and Environmental Protection Project
 Administrative and Industrial Fee Exemptions in Yinzhou Lake Paper Base
Programs Determined Not To Confer a Benefit on the Asia Symbol Companies During the POI
 Provision of Water for LTAR in Yinzhou Lake Paper Base
Programs Determined Not To Be Specific to the Asia Symbol Companies during the POI
 Provision of Land and/or Land-Use Rights to SOEs for LTAR
Programs Determined Not To Be Used by the Asia Symbol Companies

1. Titanium Dioxide for LTAR
2. Provision of Water for LTAR
3. Provision of Electricity for LTAR
4. Land-Use Rights for LTAR in Certain Industrial/Development Zones
5. Export Buyer's Credit from Export-Import Bank of China
6. Export Seller's Credit from Export-Import Bank of China
7. Tax Reductions for High and New-Technology Enterprises Involved in Designated Zones
8. Income Tax Exemptions for Forestry Projects
9. Funds for Using Wood Pulp in Forestry-Paper Integration Projects
10. Interest Payments for Forestry-Paper Integration Projects
11. Support for Developing New Paper Products
12. State Key Technology Renovation Fund
13. Grants to Cover Legal Fees in Trade Remedy Cases
14. Grants for Listing Shares
15. Demolition and Relocation Assistance for Shandong Chenming
16. Preferential Loans to SOEs
17. Jiangmen City – Honest Green Card Backbone Enterprises: Tax Refund
18. Jiangmen City – Honest Green Card Backbone Enterprises: Preferential Interest Rates
19. Jiangmen City – Honest Green Card Backbone Enterprises: Grants
20. Tax Refund for Technology Renovation Projects in Xinhui District
21. Infrastructure Fee and Tax Refund for Enterprises in Xinhui District
22. Interest Subsidy for Capital Increase and Production Expansion Projects in Xinhui District
23. Provision of Electricity for LTAR in Yinzhou Lake Paper Base
24. Provision of Steam for LTAR in Yinzhou Lake Paper Base

Indonesia [C-570-829] Programs Determined To Be Not Used

- Debt Forgiveness through the Indonesian Government's Acceptance of Financial Instruments with No Market Value
- Debt Forgiveness through APP/SMG's Buyback of Its Own Debt from the GOI
- Export Financing from Export-Import Bank of Indonesia
- Export Credit Guarantees
- Exemptions from Import Income Tax Withholding for Companies in Bonded Zone Locations
- Export Credit Insurance
- Tax Incentives for Investment in Specified Business Lines and/or in Specified Regions by Indonesia's Investment Coordinating Board (BKPM) – Corporate Income Tax Deduction

- Tax Incentives for Investment in Specified Business Lines and/or in Specified Regions by BKPM – Accelerated Depreciation and Amortization
- Tax Incentives for Investment in Specified Business Lines and/or in Specified Regions by BKPM – Extension of Loss Carry-Forwards
- Preferential Treatment for Bonded Zone Locations – Waiver of License and Fee Requirements
- Exemptions From Sales Taxes for Capital Goods and Equipment Used to Produce Exports

Programs determined to be countervailable:

- Provision of Standing Timber for Less Than Adequate Remuneration
- Government Prohibition of Log Exports

Program not to have conferred a measurable benefit:

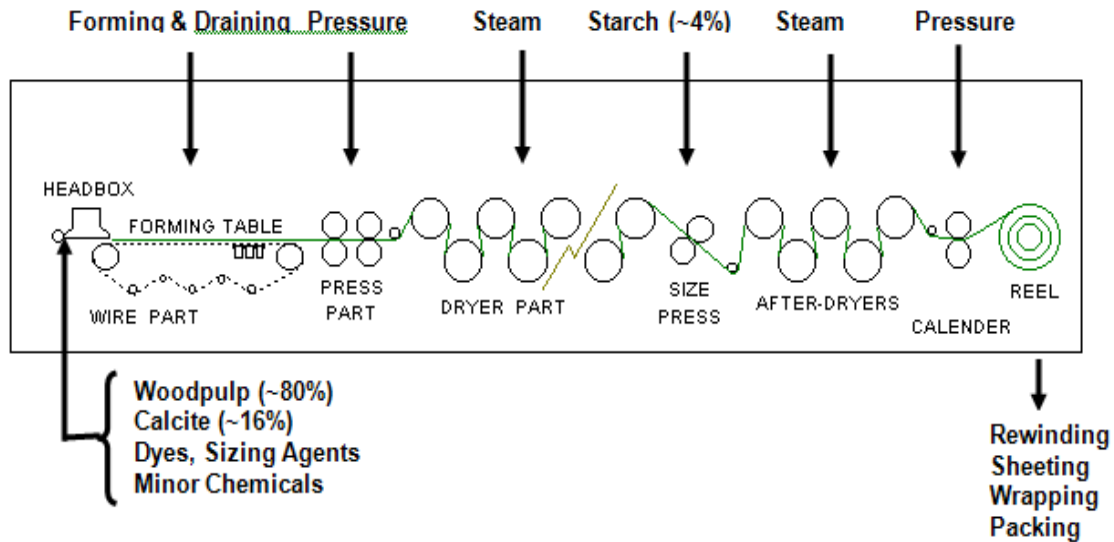
Exemption from Import Income Tax Withholding for Companies in Bonded Zone Locations

Program Determined Not to Be Countervailable

Exemption from Import Duties for Capital Goods and Equipment for Companies in Bonded Zone Locations

ATTACHMENT 5: Australian Paper's Production Process

Australian Paper's production process is as set out by the diagram below.



The papermaking process in all printing & writing paper mills starts by preparing and blending pulps, filler, starch, sizing agents, dyes and minor chemicals which are then, in very dilute form (less than 1% solids) pumped to a 'headbox' or horizontal nozzle which forms the paper sheet on a horizontal rapidly moving mesh belt or 'wire' from which some of the water is drained by gravity and by suction. At the end of the wire, the paper sheet is still only around 20% solids (80% water). The sheet then passes through a series of press rolls and more water is removed by pressure, leaving the sheet about 40% solids (60% water). The remainder of the water is removed by evaporation as the sheet passes around a series of steam heated drying cylinders.

The sheet then has a layer of starch applied to each surface at the 'size press' and is again dried using steam heated cylinders and calendared between smooth rolls at high pressures to give a smooth surface. The sheet is then rolled into parent rolls or 'Jumbos' several metres long and over 2 meters in diameter, weighing several tonnes.

The Jumbos are then rewound into smaller reels, generally 1.5 metres in diameter and around 2.5 metres long for use in the sheeting process. These smaller reels are cut directly into A4, or other cut sheet sizes, usually but not always wrapped as reams (generally, but not exclusively of 500 sheets), packed into boxes and the boxes palletised on highly automated 'finishing' equipment (the 'Cut Size Lines').

At this point the cut sheet paper is ready for loading for shipment.

Note that other uncoated woodfree papers (not cut sheet paper and therefore not like goods) to be sold in rolls or large 'folio' sheets undergo the same process on the same equipment to the point of rewinding the jumbo reels, but is then 'finished' differently as rolls or sheets for use in the customers' manufacturing processes such as printing or paper stationery manufacture.

The PaperHelp Encyclopaedia, available on line at:

<http://www.risiinfo.com/toolcontent?toolkit=paperhelp>

provides further information on the pulp and paper making process.