

CUSTOMS ACT 1901 - PART XVB

TRADE MEASURES REPORT NO. 31

CERTAIN STEEL FRAMED STORAGE SHELVES IN KIT FORM
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

APPLICATION FOR DUMPING DUTIES

Date 15 March 2001

Contents

1	SUMMARY	3
2.	ABBREVIATIONS & ACRONYMS	4
3	PURPOSE, PROCEDURES & BACKGROUND	5
3.1	<i>Purpose of investigation.....</i>	5
3.2	<i>Procedures</i>	5
3.3	<i>Application by the Australian industry.....</i>	6
3.4	<i>Public notification and investigation details.....</i>	6
4	THE GOODS UNDER INVESTIGATION	7
5	AUSTRALIAN INDUSTRY	8
5.1	<i>Like goods</i>	8
5.2	<i>Australian industry.....</i>	8
5.3	<i>The manufacturing process</i>	9
6	AUSTRALIAN MARKET	10
6.1	<i>The market.....</i>	10
6.2	<i>Market structure.....</i>	10
6.3	<i>Market size</i>	11
6.4	<i>Australian market - conclusion</i>	11
7	THE DUMPING INVESTIGATION	11
7.1	<i>Background</i>	12
7.2	<i>Export price.....</i>	12
7.3	<i>Normal value.....</i>	16
7.4	<i>Adjustments</i>	17
8	DUMPING MARGINS.....	18
9	THE ECONOMIC CONDITION OF THE INDUSTRY	18
9.1	<i>Applicant's claims</i>	19
9.2	<i>Customs assessment</i>	19
9.3	<i>Others factors.....</i>	21
9.4	<i>Conclusions.....</i>	22
10	HAS DUMPING CAUSED MATERIAL INJURY?.....	23
10.1	<i>Australian industry's claims</i>	23
10.2	<i>Importer's claims</i>	23
10.3	<i>Customs assessment</i>	24

10.4	<i>Other possible causes of injury</i>	26
10.5	<i>Conclusion</i>	26
11	WILL DUMPING & MATERIAL INJURY CONTINUE?	26
12	SUBMISSIONS IN RESPONSE TO THE SEF	27
12.1	<i>Summit</i>	27
12.2	<i>Ernst & Young</i>	27
12.3	<i>Customs consideration</i>	28
13	ANTI-DUMPING MEASURES	28
13.1	<i>Background</i>	28
13.2	<i>Preliminary affirmative determination</i>	29
13.3	<i>Ascertained export prices and normal values</i>	29
13.4	<i>Non-injurious price</i>	30
13.5	<i>Interim dumping duty</i>	32
13.6	<i>Scope of the measures</i>	32
14	RECOMMENDATIONS	33
15	LIST OF APPENDICES	36
16	LIST OF ATTACHMENTS	Error! Bookmark not defined.

1 SUMMARY

This report presents the results of the investigation by the Australian Customs Service (Customs) into the alleged dumping of exports of certain steel framed storage shelves in kit form (steel shelving kits) from the People's Republic of China (China).

Summit Storage Products Pty Ltd lodged an application with Customs requesting that dumping duties be imposed on steel shelving kits exported to Australia from China. Summit, the major Australian manufacturer of steel shelving kits claimed that the goods were dumped and causing material injury to the Australian industry.

The Australian market for steel shelving kits is supplied by local production and by imports. Imports from countries other than China did not account for any significant portion of the Australian market, measured on a value basis. The market is served predominantly by sales through major hardware and chain store retail outlets.

Customs found that steel shelving kits were exported to Australia from China at dumped prices and that this has caused material injury to the Australian industry. Customs found that Summit had suffered material injury in various forms. In particular, the dumped goods were offered at selling prices that undercut those of the Australian industry, causing Summit to suffer material injury from price suppression and depression, lost sales and from reduced profits and profitability.

Customs recommends that dumping duties be imposed on future exports of steel shelving kits from China to Australia.

2. ABBREVIATIONS & ACRONYMS

ACDN	Australian Customs Dumping Notice
Amazon Aust	Amazon Storage Systems Pty Ltd
Amazon HK	Amazon Storage Systems International Ltd
CEO	Chief Executive Officer of Customs
CFR	Cost and freight
China	The People's Republic of China
Customs	Australian Customs Service
EIT legislation	Economy in transition legislation (ss. 269TAC(5D) to (5J) of the Act)
FOB	Free on board
FIS	Free into store
GSC Aust	Geelong Sales Company Pty Ltd
GSI HK	Geelong Sales Company International (China) Pty Ltd
MDF	medium density fibreboard
Minister	Minister for Justice and Customs
NIP	non-injurious price
PAD	preliminary affirmative determination
PWC	PriceWaterhouseCoopers
s.	section, subsection, paragraph etc
SEF	statement of essential facts
Steel shelving kits	certain steel framed storage shelves in kit form
Summit	Summit Storage Products Pty Ltd
The Act	<i>The Customs Act 1901</i>
The goods	the goods under investigation
TMRO	Trade Measures Review Officer
USP	Unsuppressed selling price
WTO	World Trade Organization

3 PURPOSE, PROCEDURES & BACKGROUND

3.1 Purpose of investigation

The purpose of this investigation was to examine the available evidence and to report to the Minister for Justice and Customs (Minister), recommending whether anti-dumping measures should be imposed on exports of steel shelving kits from China.

Anti-dumping measures may take the form of dumping duties or price undertakings. Such measures may be imposed where the dumping has caused, or threatens to cause, material injury to an Australian industry producing like goods. The measures usually apply for five years.

3.2 Procedures

The procedures for dumping investigations reflect the requirements laid down in the *Customs Act 1901* (the Act). At initiation, all known interested parties are invited through public notices in a national newspaper or by direct contact by Customs to participate in the investigation. Submissions from importers, exporters and other interested parties are due within 40 days from the commencement of the investigation.

From day 60 of the investigation period, Customs may impose provisional measures (in the form of securities) on imports of the goods. These securities have the effect of providing the Australian industry with a temporary remedy against the effects of dumping pending the Minister's final decision. A preliminary affirmative determination (PAD) must be published by Customs before provisional measures can be imposed.

Customs must issue a statement of essential facts (SEF) on or before day 110 after the initiation of the investigation. The SEF outlines the facts on which Customs proposes to base its report to the Minister. Interested parties then have 20 days to respond and lodge submissions on matters of concern. The SEF may be issued later than 110 days where the Minister is satisfied that there are reasonable grounds to do so.

After consideration of the submissions received, Customs reports its conclusions and recommendations to the Minister by day 155 of the investigation period (or later where the SEF date has been extended).

The report and recommendation to the Minister are based on:

- the application;
- submissions to which Customs had regard when formulating the SEF;
- the SEF;

- any submission made in response to that statement that was received within 20 days of the statement being placed on the public record by Customs; and
- any other relevant matter.

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

Any request by an interested party for a review of the Minister's decision must be lodged with the Trade Measures Review Officer (TMRO) within 30 days of the public announcement. Where the TMRO accepts a request for review, any submissions by other parties in response to the grounds of review must be lodged within 30 days of notification of the review. The TMRO must make recommendations to the Minister within 60 days of the public notification of the review.

Further information on Customs investigations and dumping generally is provided in the glossary at Appendix 1 to this report.

3.3 Application by the Australian industry

On 22 August 2000, Customs received an application from Summit for dumping duties to be imposed on imports of steel shelving kits from China. Summit alleged that dumped imports from China were causing injury to the Australian industry in the form of:

- reduced prices
- price undercutting;
- price depression;
- price suppression;
- lost sales; and
- reduced profits and profitability.

The application also claimed that injury was threatened through a reduction in sales volumes, and through a consequential effect on employment levels.

3.4 Public notification and investigation details

Following an examination of the application, Customs considered there were reasonable grounds to warrant a formal investigation.

The initiation of the investigation was notified publicly by Australian Customs Dumping Notice (ACDN) No.2000/37 and by advertisement in the *Australian Financial Review* on 15 September 2000. A copy of ACDN 2000/37 is at Appendix 2 to this report. The notice called for submissions to be lodged by 25 October 2000, advised that the SEF would be placed on the public record by 3 January 2001 and that a final report would be made to the Minister by 17 February 2001.

A summary of the non-confidential application and relevant questionnaires was sent to known exporters and Australian importers of the goods.

Due to the complexity of the enquiry, Customs was unable to meet the deadline for publication of the SEF. Under the provisions of s.269ZHI of the Act, the Minister agreed to an extension of the SEF deadline to 29 January 2001. As a consequence, the date for Customs to report to the Minister extended to 15 March 2001. ACDN No.2001/03 of 22 December 2000 notified the change in the SEF reporting date. A copy of ACDN 2001/03 is at Appendix 3 to this report.

As required by s.269TEA(3) of the Act, interested parties were invited to make submissions in response to the SEF within 20 days of its publication.

On 8 February 2001 under the provisions of s.269TD of the Act, Customs made a PAD that sufficient grounds had been established for publication of a dumping duty notice in respect of exports of the goods from China. From that date, securities were imposed on the goods under s.42 of the Act.

In compiling this report and recommendations, Customs examined all submissions and information received. The evidence relied on by Customs in reaching its conclusions and recommendations in this report is listed at Appendix 4.

Copies of the non-confidential version of the application, the initiation report, verification visit reports, submissions received and the SEF were placed on the public file. The public file is held by the Trade Measures Branch office management at Customs House, 5 Constitution Avenue, Canberra 2601, telephone (02) 6275 6057.

The SEF and ACDNs are available on Customs site on the Internet at customs.gov.au/notices/index.htm.

4 THE GOODS UNDER INVESTIGATION

The goods under investigation are:

A range of steel framed storage shelves and a work bench which:

- have 1, 2, 3, 4 or 5 shelves;
- are made with MDF (Medium Density Fibreboard), particle board or melamine or steel shelves;
- are variously coated partially, or totally with paint, or are galvanised;
- are recommended by wording, illustration or by implication for industrial, commercial or non-decorative domestic use;
- have declared shelf strength of between 50kg and 350kg per shelf; and
- are sold in kit sets for assembly by the end user.

The goods produced by the Australian industry are either identical to the goods exported to Australia or have characteristics closely resembling those goods.

Steel shelving kits are classified within tariff classification 9403.10.00 statistical code 40. The applicable tariff classification changed on 1 July 1999. Goods have also

been imported under 9403.20.00 and 7308.90.00. The rate of duty for each tariff item is 5% for goods imported from China.

5 AUSTRALIAN INDUSTRY

5.1 Like goods

Section 269T(1) of the Act describes like goods as goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

Summit described the like goods it produces as follows:

“A range of steel framed storage shelves and a work bench which:

- have 1, 2, 3, 4 or 5 shelves;
- are made with steel frames;
- are made with steel, MDF, particle board or melamine shelves;
- are variously coated partially, or totally with paint, or are galvanised, or are Colorbond[®] Steel;
- are recommended by wording, illustration or by implication for industrial, commercial or non-decorative domestic use;
- have declared shelf strength of between 50kg and 350kg per shelf; and
- are sold in kit sets for assembly by the end user.”

The imported and locally produced products were inspected during the investigation. Customs considers that the goods exported to Australia and the locally produced goods are either identical to, or have characteristics closely resembling, each other.

5.2 Australian industry

Summit claimed to be the only manufacturer of like goods in Australia. It provided information in relation to other types of shelving manufactured in Australia. The types of shelving identified were as follows:

- wall mounted bracket and strip shelving;
- plastic shelving;
- melamine and timber shelving used for home furnishing;
- Dexion and Brownbuilt industrial shelving; and
- slotted angle shelving.

Summit provided an explanation as to why it did not consider each of these types of shelving to be like goods. Based on the information provided and subsequent enquiries, Customs considers that these other types of shelving are not like goods to those produced by the applicant.

Customs identified a number of companies in Australia that may have manufactured steel shelving for sale on the Australian market. Customs contacted each company and requested details of the shelving produced during the investigation period.

Three of the companies identified initially advised that they did manufacture shelving that may have competed in the market with the imported goods. After further investigation, Customs established that one company did manufacture a kit form steel shelving product, which it sold through its own retail stores. The company expressed neither support for nor opposition to the application. It provided details of its sales volumes and values for 1998/99 and 1999/2000 but declined to provide any further information. The information on this company's sales shows it is a minority producer of steel shelving kits. These details are included in Customs consideration of the Australian market.

5.2.1 Australian industry - conclusion

Although Customs identified one other manufacturer, Summit's application met the requirements of s.269TB(6) of the Act in that its production accounts for:

- more than 50 per cent of the total production or manufacture of like goods produced or manufactured by that portion of the Australian industry expressing support for, or opposition to, the application; and
- not less than 25 per cent of the total production or manufacture of like goods in Australia.

5.3 The manufacturing process

The steel shelving kits are fully manufactured in Australia using Australian raw materials that comprise the majority of the total raw material cost. Summit buys in raw and semi-finished materials such as steel and MDF from Australian producers and completes the work necessary to prepare kit-form shelving assemblies ready for sale.

Summit's manufacturing processes are summarised below:

Nut and bolt shelving

Steel coil is processed to form the various components of the steel shelving kits. Each of these components together with plastic feet, nuts and bolts and assembly instructions are then placed in the appropriate numbers in a carton, which is palletised and shrink-wrapped.

Hammer lok shelving

'Hammer lok' is a registered trademark of Summit and refers to shelving which does not require the use of nuts and bolts.

For these models, steel coil is processed to form the various components of the steel shelving kits. Each of these components together with pre-formed MDF shelves, plastic feet and assembly instructions are then placed in the appropriate numbers in a carton, which is palletised and shrink-wrapped.

5.3.1 The manufacturing process - conclusion

Section 269T(2) of the Act specifies that for goods other than non-manufactured raw products to be regarded as produced in Australia, they must be wholly or partly manufactured in Australia.

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

Based on the information provided by Summit together with Customs inspection of its factory, Customs considers that the goods meet the requirements of ss.269T(2) and (4) of the Act.

6 AUSTRALIAN MARKET

6.1 The market

The Australian market for steel shelving kits is supplied by two Australian manufacturers and by imports, mainly from China.

Information contained in Customs database confirmed that, over the investigation period, steel shelving kits were imported from China and from a number of other countries including Thailand. The database does not include quantity details for the majority of importations under the tariff classification(s) concerned, therefore Customs was not able to identify the volume of the imported goods. Given the small value and estimated quantity of steel shelving kits identified as originating from other countries, Customs did not pursue its enquiries in relation to goods imported from countries other than China.

Customs identified 18 potential importers of steel shelving kits from China during the investigation period. Subsequent inquiries revealed that only 6 companies had imported the goods.

6.2 Market structure

The Australian market for steel shelving in kit form is predominantly served by sales through the major hardware and chain store retail outlets. In the main, these outlets (retailers) obtain the goods from either an Australian manufacturer or from imported sources.

Summit indicated that it traditionally used commission sales agents throughout Australia to represent its products at store level although it deals directly with head

office buyers. Summit advised that it had no relationship with the commission agents other than that of seller and marketplace representative.

With regard to the imported goods, there are a variety of circumstances under which they may enter the marketplace. Customs found that during the investigation period the following arrangements applied at various times:

- the goods were imported by the importer for sale to customers, being retailers;
- the goods were imported direct by retailers from the exporter; or
- the goods were imported by the importer for sale by consignment agents.

The retailers have no relationship with the importer(s) other than that of buyer and seller. The consignment agents have no relationship with the importers other than that of importer and selling agent.

Both Summit and the importers advised that there is little seasonal fluctuation in demand for steel shelving kits, other than that generated by promotional activity.

6.3 Market size

In calculating the Australian market Customs uses, where possible, verified sales data supplied by the Australian industry, importers and exporters. In this investigation, Customs examined sales and import information obtained from the Australian manufacturers, importers, and exporters. This data is cross-referenced against that held on Customs database.

The data held on the Customs database does not include import quantities for the vast majority of transactions during the period examined. For this reason, it was not possible in the timeframe available to determine the volume of imports from sources other than China during the investigation period. However, it should be noted that Customs inquiries indicated that on a value basis, imports from countries other than China did not account for any significant portion of the Australian market.

Customs calculation of the Australian market based on information obtained from the Australian industry, from importers and exporters is depicted at Confidential Appendix 5.

6.4 Australian market - conclusion

Customs estimated the size of the Australian market based upon the information gathered from the sources discussed above.

On the basis of the information available, imports of the goods from China are not negligible in terms of s.269TDA(4) of the Act.

7 THE DUMPING INVESTIGATION

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

7.1 Background

The period of investigation for the purposes of determining the dumping margins was 1 July 1998 to 30 September 2000. The period of examination for determining injury was 1 July 1997 to 30 September 2000.

The application identified two companies that may have exported the goods of Chinese origin to Australia from either China or Hong Kong, together with the names of 9 potential importers.

From an examination of its' database, Customs identified a number of additional companies importing or exporting goods of Chinese origin that may have been the goods under investigation. Customs approached all of these companies to determine whether the goods identified were in fact the goods under consideration, and if so, to obtain costs and selling prices.

Of the 18 companies identified as possible importers:

- 13 were not importers of the goods; and
- 5 companies imported the goods under investigation.

Of the 12 companies identified as possible exporters:

- six did not respond to Customs enquiries;
- one response was received which was on behalf of four companies indicating that the four companies were to be treated as one entity; and
- two companies advised that they did not export the goods to Australia.

Enquiries with importers revealed that of the six exporters that did not respond to Customs enquiries, four did not export the goods to Australia.

A summary of Customs approaches to possible exporters and importers is shown in the table at Confidential Appendix 6.

Customs visited the premises of three importers in Australia and one exporter and a related company located in Hong Kong, as well as the exporter's manufacturing facility in China.

7.2 Export price

The export price of the goods is determined under s.269TAB of the Act.

Geelong Sales Company International Ltd (GSI HK)

The goods exported to Australia by GSI HK are manufactured in a factory in China owned by GSI HK. During the investigation period there were five Australian importers of the goods manufactured by GSI HK.

PriceWaterhouseCoopers (PWC) provided a submission to Customs on behalf of GSI HK and Amazon Storage Systems Pty Ltd (Amazon Aust). Two of the Australian importers of steel shelving kits from GSI HK were visited by Customs on 3-5 October 2000 and another importer was visited on 27 October 2000. The remaining two importers were not visited but were requested to provide import costs and Australian sales information.

Customs visited GSI HK, Amazon Storage Systems International Ltd (Amazon HK) and GSI HK's manufacturing facility in China on 14-15 November 2000. Customs identified 37 exportations from GSI HK to Australia during the period 1 July 1997 to 30 September 2000. Customs investigation confirmed that the goods were manufactured in China in a factory owned by GSI HK and that the goods were exported to Australia from the factory in China.

There are four circumstances under which the steel shelving kits have been imported into Australia:

- (i) goods ordered by Geelong Sales Company Australia (GSC Aust) from GSI HK and imported by GSC Aust;
- (ii) goods ordered by GSC Aust from GSI HK and imported by customers in Australia;
- (iii) goods ordered by Amazon Aust from Amazon HK and imported by customers in Australia; and
- (iv) goods ordered by Amazon Aust from Amazon HK and imported by Amazon Aust.

The trading arrangements for the export sales were either free on board (FOB), free into store (FIS) or cost and freight (CFR).

Customs established that:

- GSC Aust has 50% ownership of GSI HK;
- Amazon Aust has 50% ownership of Amazon HK;
- the remaining 50% shares of both GSI HK and Amazon HK are owned by another company;
- one of the directors of Amazon HK is also a director of GSI HK;
- GSC Aust and Amazon Aust share premises and facilities; and
- GSI HK and Amazon HK share premises and facilities.

Each of the four transaction circumstances noted above are examined in the following:

- *Circumstances (i) and (iv):*

The goods were exported to Australia otherwise than by the importer, however, as there was no purchase by the importer from the exporter, the export price cannot be

determined under either s.269TAB(1)(a) or (b) of the Act. In addition, due to the relationships and payment arrangements between the four companies GSI HK, Amazon HK, GSC Aust and Amazon Aust, Customs considers the transactions between these companies to be not at arms length in terms of s. 269TAA of the Act. For these transactions, all the circumstances of the exportation are known and s.269TAB(1)(c) of the Act is considered to be relevant.

The profitability of the importer's sales prices was tested by deducting all relevant costs from sales by GSC Aust and Amazon Aust to customers in Australia.

All sales by GSC Aust were profitable (circumstance (i)), and Customs recommends that export prices for GSC Aust be determined under s.269TAB(1)(c) of the Act using the invoiced FOB export price.

Not all sales by Amazon Aust were profitable (circumstance (iv)). Where sales were profitable, Customs recommends that export prices for Amazon Aust be determined under s. 269TAB(1)(c) of the Act using the invoiced FOB export price. Where sales were not profitable, Customs is of the opinion that the importer will either directly or indirectly be compensated such that it is not disadvantaged in these transactions. Thus Customs has allocated an amount for profit on these transactions and recommends that export prices be determined under s. 269TAB(1)(c) of the Act using Amazon Aust's selling prices in Australia less:

- Amazon Aust's selling, general and administrative expenses;
- on-costs in Australia, including port charges, customs brokerage and cartage;
- Customs duty;
- Amazon Aust's level of profit for profitable sales of similar models, or where a similar model was not sold, the model having the closest construction; and
- overseas freight.

- *Circumstance (ii)*

In this situation, the goods are imported directly by the customer in Australia, who pays GSI HK. Selling, general and administrative costs are incurred on these transactions by GSC Aust but these costs have not been reimbursed by any party. The customer in Australia meets the costs associated with importing the goods.

For these transactions, Customs considers that the customer is the importer in terms of s.269T(1) of the Act. Customs also believes that these transactions are arms length in terms of s.269TAA of the Act.

The goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter in an arms length transaction. However, as the costs incurred by GSC Aust have not been reimbursed by either the exporter or the importer, Customs recommends that export prices be determined under s.269TAB(1)(c) of the Act using the CFR price less overseas freight and a deduction for GSC Aust's selling, general and administrative expenses.

- *Circumstance (iii)*

In this situation, the goods are imported directly by the customers in Australia, who pay Amazon HK – not the exporter GSI HK. Amazon Aust meets the costs associated with importing the goods.

For these transactions, Customs considers that the customer is the importer in terms of s. 269T(1) of the Act. Customs also believes that these transactions are arms length in terms of s. 269TAA of the Act.

However, as the importer does not pay the exporter, but rather pays Amazon HK, there is no purchase by the importer from the exporter. Therefore, for circumstance (iii) the export price cannot be determined under either s. 269TAB(1)(a) or (b) of the Act.

For these transactions, all the circumstances of the exportation are known and s. 269TAB(1)(c) of the Act is considered to be relevant. Customs recommends that export prices be determined under s.269TAB(1)(c) of the Act using Amazon HK's selling prices less:

- Amazon Aust's selling, general and administrative expenses;
- on-costs in Australia, including port charges, customs brokerage and cartage;
- Customs duty; and
- overseas freight.

Export price calculations for GSI HK are shown at Confidential Appendix 7.

Other Exporters

In the investigation period, steel shelving from the remaining two exporters was imported by two Australian companies. There were three shipments involved. The importers were requested to provide information in relation to their costs to import and sell the goods and their sales and selling prices to Australian customers. One of the Australian importers of steel shelving was visited by Customs and the other company provided information as requested. Customs found that:

- for one shipment, prices and relevant costs were obtained but were not able to be verified. Therefore, Customs recommends that export prices be determined under s.269TAB(3) of the Act using the weighted average export price for the model considered the closest equivalent model that is exported to another importer; and
- for two shipments, prices and relevant costs were provided by the importer, but there were anomalies in the information. Therefore, Customs recommends that export prices be determined under s.269TAB(3) of the Act using the weighted average export price for the model considered the closest equivalent model that is exported to another importer.

Export prices for other exporters are included in Confidential Appendix 9.

7.3 Normal value

The normal value of the goods is determined under s. 269TAC of the Act.

China as an economy in transition

China was considered to be a centrally planned economy in the past where the government had a monopoly, or a substantial monopoly, of China's trade and determined, or substantially influenced, the domestic price of goods in that country.

The Australian government now considers China to be an economy in transition. Australian anti-dumping legislation specifically provides for a situation where normal values are to be determined for a country whose economy is in transition. The relevant provisions are at s.269TAC(5D) to s.269TAC(5J) of the Act, and for the purposes of this report will be referred to as the EIT legislation.

S.269TAC(5D) of the Act is relevant where there is a price control situation in the domestic market. S.269TAC(5G) of the Act is relevant where particular raw materials were supplied by an enterprise wholly owned by a national or provincial government and the cost incurred in procuring that raw material exceeds 10% of the total cost of producing the exported goods.

After extensive inquiries, Customs has been unable to establish that a domestic market exists for the goods in China. As such the provisions of s.269TAC(5D) of the Act do not apply in relation to the exported goods.

Customs established that the raw materials for steel shelving kits, steel and MDF, were not supplied to the manufacturer by an enterprise that is wholly owned by a national or provincial government in China. Thus the provisions of s.269TAC(5G) of the Act do not apply.

GSI HK

In determining normal values for GSI HK, Customs considered information provided in the company's submission and gathered at the verification interview.

GSI HK is the manufacturer and exporter of the goods under consideration. GSI HK does not sell any goods on the domestic market in China and there are no known other sellers in China of like goods. Accordingly, Customs has not ascertained the normal value in accordance with s.269TAC(1) of the Act.

Customs examined the cost to manufacture the goods in China. The information on cost of production is considered to be reasonable and able to be used under s.269TAC(2)(c)(i) of the Act.

The only data on administrative, selling and general costs relates to export sales as no domestic sales exist either of like goods or the same general category of goods. Therefore the administrative, selling and general cost data is unsuitable to be used as the cost incurred in sales for home consumption in China under s.269TAC(2)(c)(ii) of the Act. Customs has not ascertained the normal value in accordance with s.269TAC(2)(c) of the Act.

Customs next examined the price paid or payable for like goods sold to an appropriate third country, using the provisions of s.269TAC(2)(d) of the Act. GSI HK provided third country sales information.

In relation to third country sales there was no consideration payable for or in respect of the goods other than their price, the price was not influenced by a commercial or other relationship nor was there any reimbursement or benefit in respect of the price.

Customs next examined the cost to make and sell the goods to ascertain whether the export sales were profitable. Customs recommends that the Minister determines the amount to be the cost of production of the goods in China and the amount to be the administrative, selling and general costs associated with the sale of the goods under s.269TAAD (4) of the Act, as set out at Confidential Attachment 8. The weighted average selling price for each model was profitable.

Customs recommends that normal values be determined under s.269TAC(2)(d) of the Act for the models that were sold to an appropriate third country.

For models of the goods that have been exported to Australia but not exported to other countries, the price paid could not be determined under s.269TAC(2)(d) of the Act. For these sales, Customs recommends that normal values be determined under s.269TAC(6) of the Act using the verified costs to make and sell each particular model and adding an amount for profit equal to that achieved on the closest model of similar construction sold to an appropriate third country. Calculation of normal values under s.269TAC(2)(d) and s.269TAC(6) of the Act are at Confidential Appendix 8.

Other Exporters

No other exporters of steel shelving from China provided information to the investigation.

For the remaining exporters, Customs does not have sufficient information to ascertain normal values under s.269TAC(1) of the Act. Customs recommends that normal values for those exporters be determined under s. 269TAC(6) of the Act using the verified normal value data obtained from the manufacturer visited, however with no modification for the difference in relation to inland freight, as discussed at section 6.4 below. This results in normal values for other exporters higher than they might otherwise have been.

Normal value calculations for other exporters under s.269TAC(6) of the Act are shown at Confidential Appendix 8.

7.4 Adjustments

Where normal values are determined under s.269TAC(2)(d) of the Act, adjustments under s.269TAC(8) of the Act can be made in accordance with directions by the

Minister so that a proper comparison of normal value may be made with the export price.

In its submission GSI HK did not seek any adjustment to normal value for comparison with export price but at interview did highlight the different ports of exportation for goods sold to Australia compared to goods sold to other countries.

Customs considers an adjustment to normal value should be made under s.269TAC(8) of the Act and seeks the Minister's direction in this regard. This adjustment is to take account of the difference in inland freight costs from the factory in China to the port of export for goods exported to Australia and to the port of export for those goods exported to other countries.

8 DUMPING MARGINS

Dumping margins are determined under s.269TACB of the Act. A dumping margin is the amount by which the export price of the goods is less than their normal value. It is expressed as a percentage of the export price. The margin may be established on the basis of a comparison of either:

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

Customs recommends that the method of calculation used to assess dumping margins for this investigation be the weighted averages of comparable normal values and export prices. Dumping margins and volumes for steel shelves exported from China are shown at Confidential Appendix 9.

S.269TDA(1) of the Act requires that an investigation be terminated where the dumping margin is less than 2%. S.269TDA(4) of the Act requires that an investigation be terminated if the volume of dumped goods is negligible.

The dumping margin for each of the exporters in this investigation is greater than 2% when expressed as a percentage of the weighted average of export prices used to establish that dumping margin. The volume of dumped goods exported to Australia from China during the investigation period is not less than 3% of the total Australian import volume.

9 THE ECONOMIC CONDITION OF THE INDUSTRY

This section reports Customs consideration of the economic condition of the industry, in other words its assessment as to whether the industry has suffered injury.

For the purposes of injury analysis, a reference to the industry generally refers to Summit, as Customs was unable to analyse the prices and profitability of sales by the other member of the Australian industry. Sales volumes of the other member of the Australian industry were available and have been included in the total sales volume analysis. Customs is satisfied that Summit is the predominant industry member, and that any injury suffered by Summit would constitute injury to the industry as a whole.

Summit claimed that material injury has been caused and is threatened by dumped goods from China. It says that injury for two models commenced at or about July 1998, and for the remaining models was effective from around April 2000. Customs examined data for the period 1 July 1997 to 30 September 2000 in order to assess these claims.

9.1 Applicant's claims

In its application, Summit claimed injury in the forms of:

- reduced prices
- price undercutting
- price depression
- price suppression
- lost sales, and
- reduced profits and profitability.

The application also claims that injury was threatened through a reduction in sales volumes, and through a consequential effect on employment levels.

9.2 Customs assessment

The following sections summarise Customs analysis of the industry's injury claims and other relevant injury factors.

9.2.1 Volume effects

An examination of the industry's sales volumes over the investigation period showed that the volume of sales increased in each of the three financial years involved. There is evidence that the industry lost sales in respect of one of its customers to imported goods and that if sales to that customer had continued at the established level, the sales volume could have been substantial.

Customs estimated the size of the Australian market for steel shelving using data obtained from the industry, importers and exporters. The Australian market for steel shelving kits has increased. The data shows that the industry's market share declined in 1998/1999 but recovered somewhat in 1999/2000.

Sales volumes and market shares are shown at Confidential Appendix 5.

9.2.2. Price effects

Reduced prices/price depression

Price depression occurs when for some reason an industry lowers its prices.

Customs calculated average annual net selling prices over the investigation period. An examination of the data demonstrates that selling prices for the majority of models decreased in 1998/99 over 1997/98. However the price decrease on two of the models was far in excess of the decrease on the remaining models. There was a small decrease in the average selling price for 1999/2000 over 1998/99 for the majority of models. The September 2000 quarter saw a significant decrease in selling prices on all models.

Customs also calculated the weighted average selling prices. A comparison of the prices achieved prior to claimed injury with those of the September 2000 quarter shows that the weighted average selling price fell overall.

Average annual net selling prices by model and weighted average selling prices are shown at Confidential Appendix 10.

Price undercutting

The application provided a summary of the industry's dealings with major customers.

Customs contacted the larger retailers of steel shelving kits in order to verify the industry's claims in relation to price undercutting. The retailers that responded provided information that confirmed that they had been offered imported goods at price levels lower than those which applied to the industry's products at that time.

Customs was also able to compare the industry's 1999/2000 selling prices for two models to one customer with the price the same customer was paying for steel shelving from China. This comparison showed that the price for the imported product was lower and is detailed at Confidential Appendix 11.

Price suppression

Price suppression occurs when the margin between an industry's costs and prices is reduced. Customs calculated the industry's cost to make and sell steel shelving and compared this with net selling prices.

The data shows a reduction in the margin on two models in early 1998/1999. For the majority of the remaining models, the margin improved through to the end of 1999/2000.

When a comparison is made of the margin at September 2000 with that prior to the claimed injury, all models show price suppression.

A comparison of the cost to make and sell and selling prices by model is shown at Confidential Appendix 12.

Profits & profitability

Customs calculated the industry's profits and profitability from July 1997 to September 2000. Profitability is measured as nett profit as a percentage of nett sales revenue.

At the commencement of the claimed injury period, the profit on two models declined significantly. This is in contrast with the trend for the majority of other models. From this point up till end June 2000, profitability on the majority of models continued to improve. However, for the September 2000 quarter, the profitability for all models declined markedly.

When examining average profit for steel shelving kits, Customs noted that profit and profitability were significantly influenced by the mix of products sold in any given quarter ie, when high volumes of product with small margins are sold, the weighted average result for the company may be quite low.

Average overall profit for steel shelving kits remained at a level below that prior to the claimed initial injury until the end of June 1999. At that time profitability improved and the trend continued until the end of June 2000. The September 2000 quarter shows weighted average profitability well below the level that applied prior to claimed injury.

Weighted average profit margins are graphed at Confidential Appendix 13.

9.3 Others factors

Article 3.4 of the World Trade Organization (WTO) Anti Dumping Agreement states that "the examination of the impact of the dumped imports on the domestic industry shall include an evaluation of all relevant factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity, factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance."

Many of the above factors have been addressed at section 8.2, or elsewhere in this report. The remaining factors were examined by Customs as follows:

9.3.1 Degree of utilization of capacity

The industry did not claim injury in the form of reduced utilization of capacity. However, the industry expressed concern that a continued decline in selling prices may result in the need to cease manufacturing certain models, which may lead to under-utilization of capacity.

9.3.2 Return on investment

The industry did not claim any injury to the return on its investment in steel shelving other than a reduction in profitability. As the industry does not produce a separate balance sheet for each product, it is difficult to determine a return on investment in relation to steel shelving kits alone.

Customs calculated the return on investment from 1997-98 to 1999-00 for all products produced by the industry. Return on investment decreased in 1998/99 but showed some recovery in 1999/2000.

Customs calculation of return on investment is at Confidential Appendix 14.

9.3.3 Ability to raise capital

The industry did not claim injury in relation to its ability to raise capital.

9.3.4 Liquidity

The industry did not claim injury in relation to liquidity. Customs has calculated liquidity ratios and found that Summit is effectively managing its working capital. The ratio calculations are at Confidential Appendix 15.

9.3.5 Employment

The industry said that its employment level was threatened if the injury continued. To date the level of employment in the industry has not been adversely affected by the importation of steel shelving. However, the industry claims the number of employees may have to be reduced if prices of its steel shelving kits continue to be undercut and further sales are lost to imported product.

9.3.6 Inventories

The industry did not claim injury in the form of inventory build-up.

9.4 Conclusions

Customs found that the industry has suffered price depression, price suppression, price undercutting, loss of sales and reduced profits and profitability. The evidence shows that the injury suffered is material.

10 HAS DUMPING CAUSED MATERIAL INJURY?

As noted in the previous sections, Customs concluded that some importations of steel shelving kits have been dumped and that the industry has suffered material injury in the form of price depression, price suppression, price undercutting, loss of sales and reduced profits and profitability.

Customs must also determine if that injury has been caused by dumping or by other causes.

10.1 Australian industry's claims

Summit claimed that injury was initially experienced on two models but has since been experienced on all models. In that regard, the industry claimed that:

- two models of imported goods were introduced to Australia around July 1998, and they were exact replicas of two models of the like goods;
- it was forced to reduce its prices following the initial introduction of the imported goods in the market;
- a wider range was then offered and the price reduction was extended to other models of the like goods;
- reduced profits per unit were experienced for some of the like goods initially and are now being experienced for all models;
- injury is threatened in relation to sales volumes; and
- no factors other than dumping of imported goods threatened the Australian industry.

10.2 Importer's claims

PWC provided a submission to Customs on behalf of GSC HK and Amazon Aust. The submission rebutted the allegation of dumping and raised the following issues:

- if injury has been suffered by Summit, the causes are not from imported product but from other factors;
- business relationships and alternative suppliers;
- the timing of the arrival of the imported goods and Summit's ability to maintain prices;
- the inability of Summit to improve on its profitability in the period when imports were absent from the market;
- the inability of Summit to offer significant quantities of product to its customers at the one time and the need to limit its sales to meet orders;
- the difference between the quantities ordered from the importer and from Summit and the consequential effect on prices;

- price adjustment in light of competition;
- the level of imports of the goods from sources other than China; and
- the location of the factory in China and the sourcing of raw materials used in the production of the goods.

The submission provided comment on a number of other areas including normal value, selling prices and costs of production.

10.3 Customs assessment

Customs considers that the cost to make and sell steel shelving kits is, to a large extent, influenced by the prevailing world price for steel. There is little seasonal fluctuation in demand for steel shelving kits, other than that generated by promotional activity. Summit and the goods imported from GSI HK are the major sources of steel shelving kits in the Australian market.

10.3.1 Volume effects

In relation to volume, Summit claims to have lost sales and that its volumes are threatened. The importer on the other hand maintains that Summit can not offer significant quantities of product to customers at the one time.

Customs found no evidence to support the importer's claim that Summit is not able to offer significant quantities of product to customers at the one time.

Customs has examined the industry's sales data and this indicates that while there has been a loss of sales to imported product, volume has remained steady.

10.3.2 Price effects

The industry claimed that it was forced to reduce its prices following the initial introduction of the imported goods in the market. Now that a wider range of imported product is being offered, the price reduction has extended to other models of the like goods.

The importer asserts that a difference between the quantities ordered from the importer and from Summit would be expected to have an impact on prices and further that price adjustment is to be expected in light of competition. It disagrees with Summit's claims regarding the timing of the initial arrival of the imported goods.

Customs examined Summit's average selling prices for 1997/98, 1998/99, 1999/00 and September quarter 2000. As the selling price was examined on an annual basis the effect of injury is examined over 4 periods. The following lists the periods examined:

- 'period A' being 1997/98, during the latter part of which larger volumes of imported models were introduced ;

- 'period 'B' being 1998/99 when the effects from the larger volumes of imports can be measured;
- 'period 'C' being 1999/00, during the latter part of which import volumes increased significantly and a wider range of imported models became available; and
- 'period 'D' being the September quarter of 2000 when the effects from the importations in period C can be measured.

Customs found that the selling prices for the majority of Summit models decreased between periods A and B. In relation to the models that were the equivalent of the large volume models imported in period A and B, this decrease was substantial. The average selling price for period C declined over period B on the majority of models but not to the extent previously experienced. There were large volumes of competing imports in the latter part of this period. The selling prices on every Summit model decreased significantly in period D over period C and imported models remained available in the market.

Customs has no evidence as to what caused the downturn in prices in period B over period A. However, when a comparison is made of the magnitude of the price decreases experienced for each model it is evident that two models suffered disproportionate decreases. The two models that suffered disproportionate decreases are the two models that were the equivalent of the larger volume imported models introduced to the market around that time.

With regard to period C, there was a minor decrease over period B in selling prices. Customs is aware that the imported goods re-entered the market in this period in larger volumes and offering a wider range of product. Customs has evidence that the imported goods were offered and sold at prices that undercut those of the Australian industry. Customs also has evidence that the imported goods were sold to a customer who ceased buying from the Australian industry during this period.

Period D saw a substantial decrease in the selling price for all of the Australian industry's models of steel shelving. A wide range of imported product remained available during this period. There is evidence that the decrease in the Australian industry's selling prices is a continuation of the reductions it had made to maintain sales in the face of the availability of dumped goods.

The importer asserts that Summit is not able to offer significant quantities of product to its customers at the one time and therefore cannot offer the same pricing structure as that of the imported goods. Customs has evidence of the Australian industry's increase in production over the investigation period and considers that it has the capacity to offer significant quantities of product to its customers at the one time with commensurate price considerations. While Customs acknowledges that purchasing in large quantities could be expected to result in lower prices, and that price adjustment is to be expected in light of competition, the steel shelving kits from China have nevertheless been sold at dumped prices in the Australian market.

Summit has been able to achieve reductions in its cost to make and sell steel shelving kits however the company's selling prices have reduced to a greater extent resulting in price suppression. The steel shelving kits from China have been sold at

dumped prices in the Australian market and this has resulted in Summit realising lower prices.

Customs found that the decline in selling prices led to a fall in profits and profitability despite a decrease in cost to make and sell and an increase in sales volumes over the investigation period.

10.4 Other possible causes of injury

S.269TAE(2A) of the Act requires the Minister's consideration of whether injury to an industry is being caused, or threatened, by a factor other than dumped imports. Customs has therefore examined whether any injury to the Australian industry is being caused by other factors.

Whilst the importer submission asserted that the causes of injury are not from imported product but from other factors, it failed to identify what these factors were. No other party has identified any other factor as causing or threatening injury to the Australian industry.

Customs did not identify any factor other than dumping of the goods which it considered would have contributed to the injury to the Australian industry.

10.5 Conclusion

Customs has found that most imports of the goods from China have been at dumped prices. The dumping margins are substantial. The selling prices of dumped goods undercut those of the Australian industry.

The dumped imports have caused Summit to suffer material injury from price suppression and depression, lost sales and from reduced profits and profitability.

11 WILL DUMPING & MATERIAL INJURY CONTINUE?

Customs has found that dumping of steel shelving kits from China caused material injury to the Australian industry.

In this section, Customs considers whether future dumping of the goods is likely and whether such dumping would result in continuing material injury to the Australian industry.

The goods imported from China have established a presence in the Australian market.

As is required by s.269TEA(2) of the Act, Customs examined import data for like goods not covered by the application but imported into Australia during the period starting on the date of initiation of the investigation, and ending 20 days after the statement of essential facts was placed on the public record. This examination showed that exports of steel shelving from China were continuing. As the import data does not show quantities or unit values in the majority of instances, no assessment of the volume of exports or export prices was possible, however it was noted that the total value was appreciable.

Customs considered whether there had been or was likely to be any change in circumstance which would remove the injury to the Australian industry currently being experienced as a result of the dumped goods. There is no evidence to suggest that, in the absence of measures, dumped imports of steel shelving kits would cease to cause material injury to the Australian industry in the future.

Customs is satisfied that material injury is likely to continue from dumping of the goods from China.

12 SUBMISSIONS IN RESPONSE TO THE SEF

Customs placed the SEF on the public file on 29 January 2001. Submissions were invited to made in response to the SEF by 18 February 2001. Submissions were received from Ernst & Young on behalf of Summit, and from Summit.

The submissions are at Confidential Appendix 16 together with Customs analysis of the issues raised in each submission.

12.1 Summit

Summit provided a confidential submission in response to the SEF which was received on 16 February 2001. A non-confidential version of the submission was placed on the public file. The submission referred to the following matters:

- export price calculations and appropriate costs;
- the existence of a domestic market for the goods in China; and
- the granting of concessions to the manufacturer in China.

12.2 Ernst & Young

Ernst & Young provided a confidential submission in response to the SEF on behalf of Summit on 16 February 2001. A non-confidential version of the submission was placed on the public file.

The submission referred to the following matters:

- sales of the goods on the domestic market in China;

- the calculation of export price and normal value;
- raw material costs borne by the manufacturer in China;
- the levying of the dumping margin;
- the Ministerial Guidelines relating to Economies in Transition; and
- the exporter questionnaire.

12.3 Customs consideration

Customs considered both the submissions received in response to the SEF.

Customs reviewed the submissions and undertook additional research on particular items. Overall, the submissions did not contain any argument that would cause Customs to alter its recommendations.

13 ANTI-DUMPING MEASURES

13.1 Background

Dumping duties can be applied where it has been established that dumped imports have caused or threaten to cause material injury to the Australian industry producing like goods. The level of dumping duty cannot exceed the margin of dumping, but a lesser duty amount may be applied if it is determined that a lesser level of duty is sufficient to remove the injury.

Interim Dumping Duty

An interim dumping duty amount is collected on each importation of goods subject to dumping duties. In determining the amount of interim dumping duty payable on any goods, the Minister must ascertain an export price, a normal value and a non-injurious price (NIP) for the goods.

The interim dumping duty is based on the difference between the ascertained export price and the lower of the ascertained normal value and the ascertained NIP. The interim dumping duty will also include the amount, if any, by which the export price is less than the ascertained export price.

Interim dumping duties are imposed for five years, unless revoked earlier.

An importer may apply for repayment of any interim dumping duty paid in excess of the actual duty liability where there is sufficient evidence provided in support of the application.

An affected party may seek a review of the level of the interim dumping duty amount. Requests for a review may be made either at least 12 months or more after the interim dumping duty has been imposed, or 12 months or more after the Minister last reviewed that rate.

Price Undertaking

The Minister may defer the decision to publish a dumping duty notice and accept an undertaking from the exporter that it would so conduct future trade to Australia in like goods as to avoid causing or threatening material injury to an Australian industry producing like goods (s.269TG(4) refers).

Such an undertaking price accepted by the Minister is limited to the non-injurious price of the goods (s.269TG(5) refers).

The price undertaking usually comes into effect on the date of publication of its acceptance by the Minister and applies for five years, unless revoked earlier and is subject to the same review provisions as apply to interim dumping duty amounts.

In this investigation, no price undertaking has been offered.

13.2 Preliminary affirmative determination

Customs established that the goods exported from China were at dumped prices and that those exports have caused material injury. A PAD can be issued in accordance with s.269TD of the Act, and allows Customs to put securities in place under s.42 of the Act, in order to prevent material injury to the Australian industry occurring while the investigation continues.

Customs made a PAD which was notified by ACDN No.2001/12, issued on 8 February 2001. A copy of this ACDN is at Appendix 18.

13.3 Ascertained export prices and normal values

In determining the amount of interim dumping duty payable, the Minister must ascertain an export price, a normal value and a NIP for the goods. The interim duty is based on the difference between the ascertained export price and the lower of the ascertained normal value and the ascertained NIP. The NIP calculation is explained later in this report.

An importer can apply for repayment of any interim duty paid in excess of the actual duty liability. An affected party can seek a review of the interim duty to be paid in future shipments.

The following paragraphs explain how Customs calculated an interim dumping duty for the goods under investigation.

13.3.1 Ascertained export price

Steel shelving kits can be categorised as follows:

- steel framed with steel shelves; and
- steel framed with shelves other than steel.

Customs recommends that the Minister ascertain the export price for steel shelving kit imports from China by using the weighted average of export prices for each specification within each category over the period of investigation.

Customs recommends that the Minister ascertain the export price for models of steel shelving kits with no specification by using the maximum weighted average of export prices for the other specifications within the same category over the investigation period.

13.3.2 Ascertained normal value

Customs recommends that the Minister ascertain the normal values for steel shelving kits from China by applying the weighted average dumping margin over the period of investigation to the recommended ascertained export price for each model.

13.4 Non-injurious price

A NIP is calculated to determine the level of dumping duty that needs to be applied to dumped imports to remove the injury suffered by the Australian industry. The NIP is defined in s. 269TACA of the Act as follows:

"The non-injurious price of goods exported to Australia is the minimum price necessary:

- (a) if the goods are the subject of, or of an application for, a dumping duty notice under subsection 269TG(1) or (2)—to prevent the injury, or a recurrence of the injury, or to remove the hindrance, referred to in paragraph 269TG(l)(b) or (2)(b);"

Australia is a signatory to the WTO Anti-Dumping Agreement. The lesser duty provision is contained at Article 9.1 of that agreement, which states that:

"it is desirable that the (*anti-dumping*) duty be less than the margin (*of dumping*), if such lesser duty would be adequate to remove the injury to the domestic industry."

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

"The Minister must if the non-injurious price of the goods is less than the normal value of the goods have regard to the desirability of fixing a lesser amount of duty such that the sum of:

- (a) the export price of the goods of that kind so ascertained or last so ascertained; and
- (b) that lesser duty

does not exceed that non-injurious price".

Anti-dumping and countervailing duties are based on FOB prices in the country of export. Therefore a NIP is also calculated in FOB terms for the country of export.

The method of calculating a NIP is not defined in the legislation, however Customs will generally derive a NIP from the Australian industry's unsuppressed selling price (USP).

13.4.1 Unsuppressed selling price

A USP is the price at which the Australian industry would be able to sell the goods in a market unaffected by dumped imports.

There are a number of options available to calculate the USP, including to:

- determine a price for locally produced goods when the Australian market was not affected by dumping and adjust that price to the current date;
- use the Australian industry's cost to make and sell plus an estimated profit (if any) that the industry could achieve in a market not affected by dumping; or
- use the lowest price for undumped imports.

Summit claims that the market was not affected by dumping prior to the September quarter 1998. It says that the USP for models 502 and 503 should be as at June 1998 as these units were directly affected by dumped imports shortly after that time. Summit says that in respect of all other models, the USP should be as at March 2000 as these figures were affected by the presence of dumped goods shortly after that time.

Customs recommends that the USP for models 502 and 503 be based on Summit's cost to make and sell these models for the March 2000 quarter, together with the percentage profit that was realised in the March 1998 quarter as this profit margin was not affected by the presence of dumped imports. For the remaining models of the goods, Customs recommends that the USP be based on the cost to make and sell and the level of profit realised in the March 2000 quarter as these prices were unaffected by dumped product.

The calculation of the USPs is shown at Confidential Appendix 19.

13.4.2 Non-injurious price calculation

To calculate the NIP, post FOB exportation costs such as overseas freight and insurance, costs incurred in Australia and where appropriate an amount for the importer's profit, are deducted from the USP. An example of this calculation follows:

Unsuppressed selling price		100
Less post exportation costs		
Ocean freight & marine insurance	10	
Duty	5	
Port & broker charges	1	
Cartage to store	2	
SG&A expenses	8	
Profit	10	
Total		36
Non-injurious price		64

Customs found that the NIP is higher than the ascertained normal value. Therefore, anti-dumping measures would be based on the ascertained normal value. Calculation of the NIP is at Confidential Appendix 17.

13.5 Interim dumping duty

The interim dumping duty to be paid on imports of steel shelving kits from China would be the difference between the ascertained normal value and the ascertained export price for each model. Where the export price was below the ascertained export price, additional dumping duty would be payable to account for the shortfall.

13.6 Scope of the measures

Section 269TP of the Act allows the Minister to take anti-dumping action against all exporters from a country, rather than action against specific exporters.

Customs will recommend that the Minister take action against future imports of steel shelving kits from China on a country wide basis, in order that all potential exports of steel shelving kits from China at dumped prices would be covered for the period of operation of the measures.

Details of the recommended ascertained export prices, normal values and NIPs are at Confidential Appendix 19.

14 RECOMMENDATIONS

On 8 February 2001 Customs made a PAD that there appeared to be sufficient grounds for the publication of a dumping duty notice. Customs also imposed provisional measures (in the form of securities) on all imports of steel shelving kits from China from that date.

Section 269TG(1) of the Act provides that the Minister may take action against dumped goods that have already been exported to Australia and like goods exported after Customs has published a PAD. This action is normally limited to the latter situation.

Section 269TG(2) of the Act provides that the Minister may take action against like goods that may be exported to Australia in the future at dumped prices. This applies where such goods have already been exported to Australia at dumped prices and have been causing or are causing or are threatening material injury to an Australian industry producing like goods. This action may be imposed on like goods exported to Australia after the date of publication of an appropriate notice.

Customs is satisfied that exports to Australia of steel shelving kits from China have been sold at dumped prices and that these have caused and are causing material injury to the Australian industry. Customs is also satisfied that future exports of steel shelving kits from China may be at dumped prices.

Accordingly Customs recommends that, in accordance with s.269TG(1) of the Act, the Minister:

- be satisfied that in respect of the goods exported from China, the amount of the export price is less than the amount of the normal value and because of that material injury to the Australian industry producing like goods has been caused; and
- declare, by public notice, that s.8 of *the Customs Tariff (Anti-Dumping) Act 1975* applies to those goods where a security has been taken under s. 42 of the Act and like goods that were exported to Australia from China after Customs made a PAD, but before publication of the notice.

Customs recommends that, in accordance with s.269TG(2) of the Act, the Minister:

- be satisfied that in respect of the goods exported from China, the amount of the export price is less than the amount of the normal value and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value and because of that material injury to the Australian industry producing like goods has been and is being caused; and
- declare, by public notice, that s. 8 of the *Customs Tariff (Anti-Dumping) Act 1975* applies to like goods that are exported to Australia from China after the date of publication of the notice.

Section 8(5) of the *Customs Tariff (Anti-Dumping) Act 1975* provides that the Minister must direct that the interim dumping duty be ascertained as a specific duty, a proportional duty or some combination of these forms of duty.

Customs recommends that the Minister;

- direct that the interim dumping duty be ascertained as a proportion of the ascertained export price of the goods.

In respect of **normal value**, Customs recommends that the Minister:

- be satisfied in accordance with s.269TAC(2)(a) of the Act, that the normal value of goods exported to Australia cannot be ascertained under s.269TAC(1) of the Act because of the absence of sales of like goods in China that would be relevant for the purpose of determining a price under s.269TAC(1);
- directs that s.269TAC(2)(d) of the Act applies, for the purpose of determining normal values for certain models of the exports;
- determines under s.269TAC(2)(d) that the normal value is the price paid for like goods sold in the ordinary course of trade in arms length transactions from China to third countries;
- determines the third countries as per schedule 2 under s.269TAC(2)(d);
- directs under s.269TAC(8) of the Act that an adjustment for inland freight be made to normal values determined under s.269TAC(2)(d);
- be satisfied that sufficient information has not been furnished to enable the normal value to be determined under s.269TAC(1) or (2) of the Act for certain other models of the exports;
- determines under s.269TAC(6) of the Act that the normal value of the other models of the exports be the amount set out in Confidential Appendix 8; and
- determines under s.269TAAD(4)(a) and (b) of the Act the amounts to be the cost of production and the administrative, selling and general costs of the goods sold in China for exportation to a third country as set out in Confidential Appendix 8.

In respect of **export price**, Customs recommends that the Minister:

- determines export price for exports by Geelong Sales Company International (China) Pty Ltd under s.269TAB(1)(c) of the Act as set out in Confidential Appendix 7; and

- determines export price for exports by exporters other than Geelong Sales Company International (China) Pty Ltd under s.269TAB(3) of the Act as set out in Confidential Appendix 7.

In respect of working out whether dumping has occurred and **the levels of dumping**, Customs recommends that the Minister:

- be satisfied under s.269TACB(4) of the Act that the weighted average of export prices is less than the weighted average or corresponding normal values as set out in Confidential Appendix 9; and
- determines according to s.269TACB(1) of the Act, by comparison of export prices and normal values, that dumping has occurred.

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

15 LIST OF APPENDICES

1. Glossary
2. Initiation ACDN 2000/37 of 15 September 2000
3. ACDN 2001/03 of 22 December 2000, extending date for SEF
4. Statement of evidence relied upon
- 5*. Summary of the Australian market
- 6*. Summary of approaches to possible importers and exporters
- 7*. Export price calculations
- 8*. Normal value calculations
- 9*. Calculation of dumping margins and volume dumped
- 10*. Summit average annual nett selling prices by model and weighted average selling prices
- 11*. Comparison of selling prices - Summit and Amazon Aust
- 12*. Comparison of Summit cost to make and sell and selling prices by model
- 13*. Graph of Summit's weighted average profit margins
- 14*. Calculation of Summit's return on investment
- 15*. Calculation of Summit's liquidity ratios
- 16*. Submissions received in response to the SEF and Customs analysis
- 17*. Calculation of non-injurious prices
18. ACDN 2001/12 of 8 February 2001, announcing PAD
- 19*. Calculation of unsuppressed selling prices
- 20*. Ascertained export prices, normal values and NIPs

* Denotes CONFIDENTIAL

GLOSSARY**Arms length**

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

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

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

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

Ascertained export price, normal value and non-injurious price

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

See also normal value, export price, non-injurious price and interim duty.

Australian industry

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

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

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

See also close processed agricultural goods and like goods.

Close processed agricultural goods

Refer s. 269(4), (4A), & (4B) of the Act. Close processed agricultural goods are defined as goods that are derived substantially or completely from raw agricultural goods where the raw goods are devoted substantially or completely to the processed goods. There must also be either a close price relationship between the goods, or a significant part of the production costs of the processed goods is constituted by the cost of the raw goods. Producers of close processed agricultural goods form part of the Australian industry in respect of considerations of material injury.

Dumping

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

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

Australia's legislation does not seek to establish whether dumping was or is predatory, and in some sense unfair. Rather, the objective is simply to identify the price differentiation if it exists, any material injury caused thereby, and to provide a mechanism to remove the injurious effect of subsequent imports.

Dumping duty

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

Dumping margin

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

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

- the weighted average export price over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period;
- using the above method in respect of parts of the investigation period as if each of these parts were the whole of the investigation period;

- the export price in respect of individual transactions over the whole of the investigation period with the corresponding normal values determined over the whole of that period; or
- a combination of methods referred to above in respect of part or parts of the investigation.

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

Export price

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

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

- the importer is not the exporter;
- the transaction is arms length: and
- the goods have been purchased by the importer from the exporter.

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

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

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

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

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

See also arms length.

Final duty

Pre 1 January 1993, final duty takes the form of the dumping or countervailing duty determined by the Minister. Under the interim duty scheme introduced on 1 January 1993, interim duty becomes the final duty unless an importer requests a duty

assessment. If an importer requests a duty assessment, the final duty is the amount assessed by the Minister. In accordance with s. 269TM of the Act, dumping and countervailing duties and undertakings remain in force for a maximum of five years, unless revoked earlier.

Initiation report

A report recommending or rejecting an application for the publication of a dumping and/or countervailing duty notice. The report sets out the reasons as to whether or not, *prima facie*, the application meets the provisions of the legislation (s. 269TC of the Act).

Interim dumping/countervailing duty

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

Interim duty is the sum of:

- the difference between the lower of the ascertained normal value and the ascertained non-injurious price, and the ascertained export price of the goods;
- plus the amount by which the actual export price is less than the ascertained export price.

The interim duty may be levied on an *ad valorem* basis (a percentage of the export price), as an amount per unit of quantity or as a combination of the two.

See also ascertained normal value, export price and non-injurious price.

Investigation

Customs role in the dumping and subsidisation investigation is to:

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

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

20 days to examine an application and if not satisfied about certain matters reject the application:

- if an application is not rejected, at day 60 or later (calculated from the day of initiation of the investigation) to reach a preliminary affirmative determination (if

appropriate); at day 110 to issue a statement of essential facts (unless this date has been extended by the Minister); and day 155 to make a recommendation to the Minister.

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

Investigation period

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

Like goods

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

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

Material Injury

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

The factors include:

- the size of the dumping margin/s in respect of the goods exported to Australia and/or particulars of any countervailable subsidy received in respect of goods exported to Australia;
- the quantity of goods under consideration exported to, and consumed in Australia during a particular period and the consequential effect on the quantity of like goods produced or manufactured in Australia by the Australian industry and sold or consumed in Australia;
- the export price of the goods under consideration and the price paid for the goods sold in Australia and the consequential effect on the price paid for like goods produced or manufactured by the Australian industry and sold in Australia; and

- the effect that the exportation of goods under consideration to Australia in those circumstances has on the relevant economic factors in relation to the Australian industry.

Non-injurious price (NIP)

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

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

Customs generally derives the NIP by first establishing a price at which the local industry might reasonably sell its product in the absence of the price effects of dumped/subsidised imports. This price is known as the unsuppressed selling price. From this, the costs incurred in importation are deducted until a notional selling price at an FOB level is derived.

Normal value

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Notice

A notice is a dumping duty or countervailing duty notice. It is a legal document signed by the Minister or his/her delegate, giving effect to the provisions of the anti-dumping legislation.

Ordinary course of trade

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

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

Preliminary affirmative determination (PAD)

A determination made by Customs not less than 60 days after the initiation of an investigation. Customs may impose provisional measures (in the form of securities) on imports of the goods if there is sufficient verifiable information available – and only after this determination has been made.

Provisional measures - securities

The provisional measures, taken as securities and after the issue of the PAD, are intended to prevent injury to the Australian industry pending the Minister's final decision. Provisional measures may also be collected in other circumstances, for example, a breach of an undertaking.

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

Where the Minister accepts the recommendation to impose duties, current securities are converted to an interim duty liability. If the interim duty liability for the period of

the final finding is less than the amount of securities collected, any additional security that has been collected is refunded.

Public file

A file maintained by Customs, in accordance with s. 269ZI of the Act, containing non-confidential information pertaining to anti-dumping and countervailing investigations. The file is held at the Australian Customs Service, Trade Measures Branch, Customs House, 5 Constitution Avenue, Canberra City 2601

It is available for viewing and copying by all interested parties by contacting Trade Measures Office management staff on (02) 6275 6057.

Scope

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

Securities

See provisional measures.

Statement of essential facts

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

Subsidisation

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

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

The financial contribution must involve:

- a direct transfer of funds; or
- a direct transfer of funds depending on particular circumstances occurring; or
- the acceptance of liabilities either actual or potential; or
- the forgoing or non-collection of revenue (except an allowable exemption or remission); or
- the provision of services other than normal infrastructure.

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

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

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

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

Trade Measures Review Officer

Applicants may ask the TMRO to review Customs decisions in the case of:

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

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

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

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



**AUSTRALIAN
CUSTOMS SERVICE**

Australian Customs Dumping Notice
No.2000/37

CUSTOMS ACT 1901 - PART XV B

**INITIATION OF AN INVESTIGATION INTO THE ALLEGED
DUMPING OF CERTAIN STEEL SHELVING KITS FROM THE
PEOPLE'S REPUBLIC OF CHINA**

The Australian Customs Service has initiated an investigation into an application lodged by Summit Storage Products Pty Limited, the major Australian producer of like goods, for a dumping duty notice in respect of certain steel shelving kits, exported to Australia from the People's Republic of China.

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

- reduced prices
- reduced profits
- price undercutting
- price depression
- price suppression
- lost sales, and
- reduced profits and profitability

The application also claims that injury is threatened through a reduction in sales volumes, and though a consequential effect on employment levels.

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

The goods under investigation are steel framed storage shelves and a work bench, which are sold in kit form, and which:

- have 1, 2, 3, 4 or 5 shelves;
- are made with MDF, particle board or melamine shelves;
- are variously coated partially or totally with paint, or are galvanised;

- are recommended by wording, illustration or by implication for industrial, commercial or non-decorative domestic use;
- have declared shelf strength of between 50kg and 350kg per shelf; and
- are sold in KDC (knocked down condition) for assembly by the end user.

The goods under investigation are classified as follows under the *Customs Tariff Act 1995*:

Description	Tariff Item No.	Stat. Code
Metal furniture of a kind used in offices	9403.10.00	40
Other metal furniture	9403.20.00	19

The goods, when imported from China are subject to a duty rate of 5%.

The period of investigation will be from 1 July 1998, and Customs will examine exports to Australia of the goods under consideration since that date to determine whether dumping has occurred. Customs will examine details of the Australian market from 1 July 1997 for injury analysis.

In reaching its findings Customs must consider whether:

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

A notice under subsection 269TC(4) of the *Customs Act 1901* advising initiation of this investigation is to be published in the *Financial Review* on 15 September 2000. Interested parties are advised to lodge submissions no later than the close of business on 25 October 2000. Parties should address their submission to:

The Director
 Trade Measures, Operations 1
 Australian Customs Service
 Customs House
 5 Constitution Avenue
 CANBERRA ACT 2601

Interested parties may be granted an extension of time for lodgement of a submission, provided the request is in writing and is reasonable and practical given the circumstances. Parties responding by 25 October 2001 will have an opportunity to lodge a supplementary submission in reply to matters raised by

other parties. The due date for any supplementary submissions is 14 November 2000.

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

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

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

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

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

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

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

Non-confidential submissions, and a copy of relevant correspondence between Customs and other persons, will be made available to interested parties through the public record. The public record may be examined at the Australian Customs Service, 5 Constitution Avenue, Canberra 2601. To access the public record, contact Mr Phil Hilyard on telephone number (02) 6275 6057.

The dates specified in this notice for lodging submissions must be observed to enable Customs to report to the minister within the legislative timeframe. A preliminary affirmative determination may be made not less than 60 days from the date of initiation. Provisional measures may be imposed after the preliminary determination has been made.

A statement of essential facts will be placed on the public record by 3 January 2001 (or by such later date as the minister may allow in accordance with s. 269ZHI). The statement will set out the material findings of fact on which Customs intends to base its recommendation to the minister. That statement

will invite interested parties to respond, within 20 days, to the issues raised therein.

Submissions received in response to the statement will be taken into account in compiling the report and recommendation to the minister. The report to the minister is due 45 days after the statement of essential facts is issued (ie 17 February 2001).

Enquiries about this notice may be directed to Mark Doyle, phone 02 6275 6557 or fax 02 6275 6990. Customs dumping notices are available on the internet at <http://www.customs.gov.au/notices/index.htm>.

Paul O'Connor
National Manager, Trade Measures
FOR CHIEF EXECUTIVE OFFICER
CANBERRA, ACT

15 September 2001

**AUSTRALIAN
CUSTOMS SERVICE****Australian Customs Dumping Notice
No.2001/03**

CUSTOMS ACT 1901 - PART XVB

**EXTENSION OF TIME GRANTED TO ISSUE THE
STATEMENT OF ESSENTIAL FACTS****IN RELATION TO THE INVESTIGATION INTO ALLEGED DUMPING OF CERTAIN
STEEL SHELVING KITS FROM THE PEOPLE'S REPUBLIC OF CHINA**

On 15 September 2000, Australian Customs Dumping Notice No. 2000/37 advised of the initiation of an investigation of an application lodged by Summit Storage Products Pty Limited, the major Australian producer of like goods, for the publication of a dumping duty notice in respect of certain steel shelving kits exported to Australia from the People's Republic of China.

That notice advised that the statement of essential facts would be placed on the public record by 3 January 2001. The statement of essential facts sets out the facts on which Customs proposes to base its recommendations to the minister.

Due to the complexity of the inquiry, Customs is unable to meet the deadline for publication of the statement. In these circumstances, under s. 269ZHI of the Customs Act 1901 the minister has agreed to an extension of the deadline. The statement will now be placed on the public record on or before 29 January 2001. Customs will make every effort to publish the statement at an earlier date if possible.

Interested parties are invited to make submissions to Customs in response to the statement within 20 days of that statement being placed on the public record.

Inquiries about this notice should be directed to Mark Doyle, phone (02) 6275 6557, facsimile (02) 6275 6990 or e-mail mark.doyle@customs.gov.au

Sue Pitman
National Manager, Trade Measures Branch
FOR CHIEF EXECUTIVE OFFICER
CANBERRA, ACT

22 December 2000

Statement of Evidence Relied Upon

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

Section		Evidence relied upon
3	The goods under investigation	Information provided by: - the Australian industry - importers, and - other interested parties
4	The Australian industry	Information provided by: - the Australian industry - other interested parties, and - others
5	The Australian market	Information provided by: - the Australian industry - importers - other interested parties, and - others
6	The dumping investigation	Information provided by: - the importers - the exporters, and - other interested parties
7	Dumping Margins	Findings in section 6 of the report
8	The economic condition of the industry	Information provided by: - the Australian industry, and - other interested parties
9	Has dumping caused material injury?	Information provided by: - the Australian industry - the importers - the exporters, and - other interested parties
10	Will dumping and material injury continue	Findings in sections 6, 7, 8 and 9 of the report
11	Submissions in response to the SEF	Information provided by: - the Australian industry
12	Anti-dumping measures	Information provided by: - the Australian industry - the importers - the exporters; and - other interested parties



AUSTRALIAN CUSTOMS SERVICE

Australian Customs Dumping Notice No.2001/12

Section 269TD of the Customs Act 1901

Preliminary Affirmative Determination & Imposition of Securities

Certain steel shelving kits from the People's Republic of China

The Australian Customs Service (Customs) commenced an investigation on 15 September 2000 after an application lodged by Summit Storage Products Pty Limited. The investigation concerns the alleged dumping of steel-framed storage shelves and a work bench, which are sold in knocked down condition.

The goods under investigation are exported from the People's Republic of China.

In accordance with s. 269TD of *the Customs Act 1901*, the delegate has now determined that sufficient grounds have been established for the publication of a dumping duty notice.

In order to prevent material injury occurring to the Australian industry while the investigation continues, securities under s. 42 of the Act will be required in respect of any interim dumping duty that may become payable in respect of the goods exported from China. The securities will apply to steel shelving which is exported from China and is entered for home consumption on or after 8 February 2001.

Dumping margins were established by comparing the weighted average export price and weighted average normal value. The resultant margins are set out below:

COUNTRY OF ORIGIN	EXPORTER	DUMPING MARGINS
CHINA	GEELONG SALES COMPANY INTERNATIONAL (CHINA) PTY LTD	22%
CHINA	OTHER EXPORTERS	105%

Customs has calculated the amount of securities payable by applying the dumping margins to the weighted average export prices of the goods. The actual amount of the security is not published as it is confidential.

In reaching this preliminary affirmative determination, Customs is satisfied that imports of steel shelving from China have been at dumped prices, have caused material injury to the Australian industry and that it is likely that importations of steel

shelving will occur in the future. In addition to the preliminary affirmative determination Customs considers that it is necessary to impose securities to ensure that the industry does not suffer further injury while this investigation is completed.

Statement of essential facts No. 031 was placed on the public record on 29 January 2001. The statement contains material findings of fact on which Customs proposes to base its final recommendation to the Minister. Interested parties have an opportunity to make a submission in relation to the statement no later than 18 February 2001. Customs may disregard any submission received after that date. Parties are required to provide a non-confidential version that will be placed on the public record.

Customs is due to report to the Minister on 15 March 2001. The Minister will then decide whether measures are to be imposed and if so, the level of the measures. Depending on the Minister's decision, preliminary measures may be converted to interim duty or refunded.

Statement of essential facts No. 31 dated 29 January 2001 is available on the internet at <http://www.customs.gov.au/notices/index.htm>. The statement may also be obtained by contacting Trade Measures Office Management on telephone number (02) 6275 6547.

Enquiries concerning this notice may be directed to Mark Doyle on telephone (02) 6275 6557, fax (02) 6275 6990 or email mark.doyle@customs.gov.au.

SUE PITMAN
National Manager
Trade Measures Branch
CANBERRA ACT

8 February 2001