JUDGMENT No. 854 / 93

CATCHWORDS

CUSTOMS - Anti-dumping - importation into Australia of castors manufactured in Taiwan - determination of "normal value" - alleged failure of the Australian Customs Service to make adequate investigations - error of law - appropriate basis for the purposes of comparison of markets.

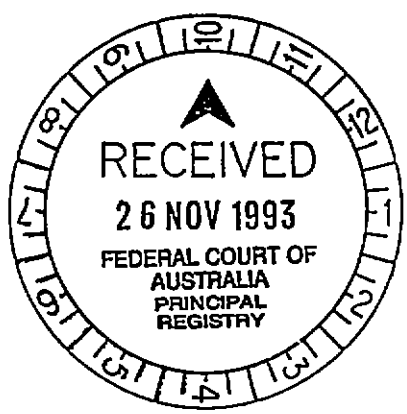
ADMINISTRATIVE LAW - judicial review - whether an extension of time for lodgment of an application for review appropriate - sufficiency of evidence required to support an administrative decision.

Administrative Decisions (Judicial Review) Act 1977 (Cth)
Anti-Dumping Authority Act 1988 (Cth)
Customs Act 1901 (Cth) - s.269TAC
GATT Anti-Dumping Code
GATT Code on Subsidies and Countervailing Duties

Prasad v. Minister for Immigration (1985) 6 F.C.R. 155
Consolidated Edison Co v. National Labor Relations Board 305 US 197 (1938)
American Textile Manufacturers Institute Inc. v. Donovan, Secretary of Labor 452 US 490 (1981)
Mahon v. Air New Zealand [1984] AC 808
Reg. v. Secretary of State for the Home Department; Ex parte Doody [1993] 3 W.L.R. 154
Federal Commissioner of Taxation v. Broken Hill South Ltd (1941) 65 C.L.R. 150
Australian Broadcasting Tribunal v. Bond (1990) 170 CLR 321
J. Wattie Canneries Ltd v. Hayes (1987) 74 A.L.R. 202

C.A. FORD PTY LTD t/as CAFORD CASTORS v. COMPTROLLER-GENERAL OF CUSTOMS
No. G 514 of 1992

Davies J.
24 November 1993
Sydney



IN THE FEDERAL COURT OF AUSTRALIA)
)
NEW SOUTH WALES DISTRICT REGISTRY) No G 514 of 1992
)
GENERAL DIVISION)
)

BETWEEN: C.A. FORD PTY LTD t/as CAFORD CASTORS

Applicant

AND: THE COMPTROLLER-GENERAL OF CUSTOMS

First Respondent

AND: T H E A N T I - D U M P I N G AUTHORITY

Second Respondent

Coram: Davies J.
Date: 24 November 1993
Place: Sydney

MINUTES OF ORDER

THE COURT ORDERS THAT:

1. Time be extended so as to validate the lodgment of the application on 24 July 1992.

2. The application be dismissed.

3. The applicant pay the respondents' costs.

NOTE: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

IN THE FEDERAL COURT OF AUSTRALIA)
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NEW SOUTH WALES DISTRICT REGISTRY) No G 514 of 1992
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BETWEEN: C.A. FORD PTY LTD t/as CAFORD CASTORS

Applicant

AND: THE COMPTROLLER-GENERAL OF CUSTOMS

First Respondent

AND: THE ANTI-DUMPING AUTHORITY

Second Respondent

Coram: Davies J.
Date: 24 November 1993
Place: Sydney

REASONS FOR JUDGMENT

The applicant, C.A. Ford Pty Ltd ("Caford") seeks orders of review under the Administrative Decisions (Judicial Review) Act 1977 (Cth) ("the ADJR Act") with respect to a report and preliminary finding, No. 92/2, of the Australian Customs

Service ("Customs") and the consequential report thereon, Report No. 70, of the Anti-Dumping Authority ("the Authority").

Earlier 1990 decisions of Customs and of the Authority were the subject of a judgment delivered by Wilcox J. on 8 March 1991, C.A. Ford Pty Ltd v. Comptroller-General of Customs (1991) 25 A.L.D. 275. His Honour set aside the decisions and remitted the matter for reconsideration. After reconsideration, Customs again concluded that the export of castors from Taiwan Province at dumped prices had not caused material injury to the Australian castors industry and that there was no threat of material injury from such dumped imports. This negative preliminary finding by Customs was confirmed by the Authority.

The first issue is whether there should be an extension of time for the lodgment of the application, which was lodged 14 days outside the 28 day period from the supply of the decision and reasons of the Authority prescribed by s.11 of the ADJR Act. The reason for the delay was that the applicant was taking advice and was considering whether or not legal proceedings should be instituted.

The considerations to be taken into account in the exercise of the power to extend time have been set out in the classic statement by Wilcox J. in Hunter Valley Development Pty Ltd v. Cohen (1984) 3 F.C.R. 344 at 348-9. I respectfully adopt his Honour's remarks. In the present case, the application was lodged reasonably promptly, having regard to the complexity of the matter, and no significant prejudice to the respondents, to Australian industry or to importers would be likely to have

resulted from the 2 weeks delay. There being a substantial issue which it would be proper for the Court to consider and an acceptable explanation for the delay, I think the time should be extended so as to ensure that justice is done. Accordingly, time will be extended so as to validate the lodgment of the application on 24 July 1992.

It was submitted by counsel for Caford that the decision-making process was flawed in two ways. First, it was said that there was an inadequate investigation by Customs prior to the issuance of its report and preliminary finding No. 92/2 and that, because, under s.8(3) of the Anti-Dumping Authority Act 1988 (Cth), the Authority was limited to the materials which had been available to Customs, there was also inadequate information before the Authority to found its decision. It was said that, because of inadequate investigation, the report and finding of Customs should be set aside and that that setting aside should carry with it as a necessary consequence the setting aside of the decision of the Authority.

Counsel also submitted that the reasoning of the Authority disclosed an error of law in that the Authority, so it was said, adopted an unsuitable basis for the purposes of comparison. Counsel submitted that, on this ground, the decision of the Authority should be set aside. It was further submitted that as the same or a similar error appeared in the reasoning of Customs, that decision should also be set aside.

Customs had difficulty in establishing whether or not there truly was a market for home consumption in Taiwan of castors of the kind and quality which were both manufactured in and imported into Australia. Manufacturers in Taiwan appeared to

be not forthcoming either as to the extent to which goods were sold in Taiwan for home consumption, as to the prices at which any such castors were sold or as to the costs of production. Many of the relevant goods were sold in Taiwan by the manufacturer to an exporter for export or to persons such as chair manufacturers who were exporters of such chairs. Moreover, when goods were sold in Taiwan, the prices were generally negotiated and not stated in a price list. Records of the sales, of the costs of production and of the resulting profits of most manufacturers were either not produced or were limited in extent and value. The existence of the market for home consumption, of its extent and of the prices therein were difficult to ascertain.

In the 1990 reports, Customs had calculated the costs of production of a firm, Taiwan Golden Ball Industrial Co Ltd ("Golden Ball"), a major part of whose business was to manufacture castors and to sell those castors to Taiwan Specco Co Ltd ("Taiwan Specco"), a firm which then exported the castors to Australia. The calculations of Customs and of the Authority were based on s.269TAC(2) of the Customs Act 1901 (Cth) ("the Act").

In C.A. Ford Pty Ltd v. The Comptroller General of Customs, Wilcox J. found that the investigation which had been made of the domestic market had been inadequate. His Honour applied a passage from his own judgment in Prasad v. Minister for Immigration (1985) 6 F.C.R. 155 at 169-70, in which his Honour had said:-

> "But, in a case where it is obvious that material is readily available which is centrally relevant to the decision to be made, it seems to me that to proceed to a decision without making any attempt to obtain that information may properly be described as

> an exercise of the decision-making power in a manner so unreasonable that no reasonable person would have so exercised it."

His Honour held that, as the material before Customs included a letter from Coopers & Lybrand, accountants, which asserted the existence of a Taiwanese market complying with s.269TAC(1), Customs should have further investigated the existence of that market, for if it existed and the facts of the market could be ascertained, then the decision should have been taken under s.269TAC(1) and not under s.269TAC(2). Accordingly, the matter was sent back for reconsideration.

The market in Taiwan was then further investigated; but the manufacturers were even less cooperative than had previously been the case. Further information was obtained and some of the earlier material was updated. On the whole of the material, both Customs and the Authority came to the view that a decision could not be made under either s.269TAC(1) or (2), and that a normal value should be assessed under s.269TAC(6), namely "the normal value ... as is determined ... having regard to all relevant information." Both Customs and the Authority used the material which was considered to be inadequate to support a finding under s.269TAC(1) or (2) to support a finding as to normal value under s.269TAC(6).

This application has been brought on the ground that the further investigations made by Customs in Taiwan were just as inadequate as those made prior to the 1990 decisions and that, in the light of the order of Wilcox J., Customs ought to have ascertained what were the facts with respect to the domestic market in Taiwan. It was submitted that the investigation undertaken was so inadequate as to make the

decisions void for unreasonableness, that is to say as decisions so lacking foundation in the material taken into account that no reasonable decision-maker would have come to them.

In considering this submission, it should be kept in mind that the Australian principles of judicial review in relation to sufficiency of evidence may be more limited than they are in the United States. In that latter country, it has long been accepted that administrative decisions should be supported by substantial evidence having regard to the whole of the record. See, eg. Universal Camera Corp v. National Labor Relations Board 340 US 474 (1951). In Consolidated Edison Co v. National Labor Relations Board 305 US 197 (1938) the Court said, at 229, that:-

> "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

See also American Textile Manufacturers Institute Inc. v. Donovan, Secretary of Labor 452 US 490 (1981) in which, after citing that passage, the Court said at 543, in relation to the facts before it:-

> "This is not substantial evidence. It is unsupported speculation."

In the United Kingdom also, it is accepted that, to be valid, an administrative decision must be rational. See, eg., Council of Civil Service Unions v. Minister for Civil Service [1985] AC 374 at 410-411; Reg. v. Monopolies and Mergers Commission; Ex parte South Yorkshire Transport Ltd [1993] 1 W.L.R. 23 at 32; Reg. v. Secretary of State for the Home Department; Ex parte Doody [1993] 3 W.L.R. 154 at 169. A decision which contradicts the established facts or is so lacking in support from the

evidence that no reasonable decision-maker would have arrived at it is not a rational decision in this sense. See eg. Edwards (Inspector of Taxes) v. Bairstow [1956] AC 14 at 36; Mahon v. Air New Zealand [1984] AC 808 at 821. As Wade on Administrative Law 6th Ed. states at 319:-

> ".. the limit of this indulgence (by the court) is reached where findings are based on no satisfactory evidence at all It is one thing to weigh conflicting evidence which might justify a conclusion either way. It is another thing altogether to make insupportable findings. This is an abuse of power and may cause grave injustice. At this point, therefore, the court is disposed to intervene."

In Australia, there are decisions which expressly reject any such approach. See, eg., Azzopardi v. Tasman UEB Industries Ltd (1985) 4 NSWLR 139; Mahony v. Industrial Registrar of New South Wales (1986) 8 NSWLR 1. However, on occasions, decisions have been set aside as being fanciful, capricious or perverse. See eg. R. v. Connell; Ex parte The Hatton Bellbird Collieries Ltd (1944) 69 C.L.R. 407 at 432. On other occasions, the Wednesbury terminology has been applied. Thus, in Federal Commissioner of Taxation v. Broken Hill South Ltd (1941) 65 C.L.R. 150, Starke J. at 156 said that the question was:-

> "... whether there was material before it (a board of review) upon which it could reasonably reach its conclusion."

At 157, McTiernan J. referred to:-

> "materials ... upon which the board could properly find . "

At 160, Williams J. said:-

> "The only question of law which arises on the appeal, therefore, is whether there is any evidence on which the board could reasonably conclude ..."

In Australian Broadcasting Tribunal v. Bond (1990) 170 C.L.R. 320 at 355-7, Mason C.J. discouraged adoption of a "no sufficient evidence" test. His Honour, after examining authorities in the United Kingdom including Edwards (Inspector of Taxes v. Bairstow and Mahon v. Air New Zealand, said:-

> "The approach adopted in these cases has not so far been accepted by this Court."

However, even in Australia, the thrust of the ADJR Act is towards rational decision making based on material which supports the decision taken. Thus, s.13 of the ADJR Act gives persons affected by an administrative decision an entitlement to obtain a statement of the reasons for the decision including a statement of the facts found and a reference to the materials on which the findings were based. I read Australian Broadcasting Tribunal v. Bond as accepting that the Wednesbury principle applies if a decision is so unsupported by the facts that no reasonable decision-maker would have made it. Nevertheless, the remarks of Mason C.J. serve as a warning that care must be taken in the consideration of this ground of review, so as to ensure that the function of fact-finding is not usurped by a court but is left with the administrative decision-maker in whom Parliament has reposed the power and duty to perform that function. Mason C.J. reaffirmed the importance of leaving decisions as to the facts to the persons appointed to determine them.

In this light, I turn to consider the sufficiency of the investigation by Customs. Part XVB of the Customs Act does not impose upon Customs an obligation for itself to investigate and ascertain all relevant facts. Section 269TB requires first the lodging of an application by a person who believes that there are or may be reasonable

grounds for the publication of a dumping notice. Section 269TC provides that the Comptroller, if he is satisfied inter alia that the matter set out in the application constitutes reasonable grounds for the publication of a dumping duty notice, shall publish a notice which, inter alia, will invite interested parties to lodge submissions for the Comptroller concerning the publication of the notices sought in the application. Section 269TD provides that, at the end of the period for the lodging of submissions, the Comptroller shall consider the application, taking into account any submissions received and any other matters that the Comptroller considers relevant. That is the statutory framework. It does not require the Comptroller to make lengthy investigations. The Comptroller is entitled to rely primarily on the submissions received.

Moreover, Australia is a party to the GATT Anti-Dumping Code, an agreement on the implementation of Article VI of the General Agreement on Tariffs and Trade. This agreement provides procedures for anti-dumping enquiries. Article 6 of the Agreement provides, inter alia:-

> "1. The foreign suppliers and all other interested parties shall be given ample opportunity to present in writing all evidence that they consider useful in respect to the anti-dumping investigation in question. They shall also have the right, on justification, to present evidence orally.
>
> 2. The authorities concerned shall provide opportunities for the complainant and the importers and exporters known to be concerned and the governments of the exporting countries, to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 3 below, and that is used by the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information.
>
> ...
>
> 5. In order to verify information provided or to obtain further details the authorities may carry out investigations in other countries as required, provided they obtain the

agreement of the firms concerned and provided they notify the representatives of the government of the country in question and unless the latter object to the investigation.

6. When the competent authorities are satisfied that there is sufficient evidence to justify initiating an anti-dumping investigation pursuant to Article 5, the Party or Parties the products of which are subject to such investigation and the exporters and importers known to the investigating authorities to have an interest therein and the complainants shall be notified and a public notice shall be given.

7. Throughout the anti-dumping investigation all parties shall have a full opportunity for the defence of their interests. To this end, the authorities concerned shall, on request, provide opportunities for all directly interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting and failure to do so shall not be prejudicial to that party's case.

8. In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final findings, affirmative or negative, may be made on the basis of facts available.

9. The provisions of this Article are not intended to prevent the authorities of a Party from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final findings, whether affirmative or negative, or from applying provisional or final measures, in accordance with the relevant provisions of this Code." (the emphasis is mine)

It will be seen that the paragraphs of this article provide opportunities to interested persons to make submissions rather than impose an investigative role on the authorities themselves. Para. 5 provides that the authorities may carry out investigations in other countries but only with the consent of the firms in question.

This concept is expanded in the GATT Code on Subsidies and Countervailing Duties, which is an agreement on the interpretation and application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade. Article 2 of that Code provides inter alia:-

"8. The investigating authorities may carry out investigations in the territory of other signatories as required, provided they have notified in good time the signatory in question and unless the latter objects to the investigation. Further, the investigating

> authorities may carry out investigations on the premises of a firm and may examine the records of a firm if (a) the firm so agrees and (b) the signatory in question is notified and does not object.
>
> 9. In cases in which any interested party or signatory refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final findings, affirmative or negative, may be made on the basis of the facts available.
>
> 10. The procedures set out above are not intended to prevent the authorities of a signatory from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final findings, whether affirmative or negative, or from applying provisional or final measures, in accordance with relevant provisions of this Agreement."

These provisions show that the general procedures for the implementation of anti-dumping duties are based primarily on the fair consideration of information which is provided by the applicant and by other interested parties who care to put in submissions. The authorities may make their own enquiries but it is an intention of the Code that business people in other countries will not be harassed and that information obtained will be given voluntarily.

In this light, I would not hold that, in the present case, Customs failed to make sufficient enquiries in Taiwan or that the decisions taken, which in substance came to the view that damage to Australian industry by dumped castors from Taiwan had not been significant and was not threatened, were invalid for lack of investigation. This is not a view different from that of Wilcox J. The further investigation that his Honour directed was undertaken and it is the state of the material as ascertained thereafter which I must consider. Other decisions in which a challenge brought on the basis that the investigation was inadequate was rejected include J. Wattie Canneries Ltd v. Hayes (1987) 74 A.L.R. 202; Enichem Anic Srl v. Anti-Dumping Authority (1992) 39

F.C.R. 458; Hyster Australia Pty Ltd v. Anti-Dumping Authority (1993) 112 A.L.R. 582.

It is of importance that the information supplied by Caford was, on inquiry, found by Customs not to be reliable. The Authority took the same view. There is no challenge to this finding. And that is a most significant point, for although the result of an anti-dumping inquiry will not necessarily depend upon the strength of the information supplied by the applicant, the stronger that information is, the more likely it will be that the inquiry will result in a positive finding.

Customs and the Authority based their findings primarily upon information given by the Taiwan manufacturer, Golden Ball. Golden Ball was, of course, the manufacturer which sold to Taiwan Specco which in turn exported to Australia. But Customs and the Authority did not simply adopt Golden Ball's prices to Taiwan Specco.

There were four categories of castors. In respect of categories 1 and 2, the Authority, whose reasoning differed in some respects from that of Customs, adopted what it considered to be Golden Ball's prices in domestic sales in Taiwan. Counsel for the applicant has made the complaint that Customs did not verify either who the purchasing companies were or that the sales were for home consumption. Certainly, there is no verification of those matters. But the relevant invoices were provided by Golden Ball on the footing that they were illustrative of prices which Golden Ball

charged for domestic sales in Taiwan. The finding which was based on these invoices was a finding of fact which was open on the evidence.

In relation to category 3 which dealt with castors on legs, as such castors were not sold domestically in Taiwan, the Authority added Golden Ball's price of the legs to the value of the castors as calculated in respect of items 1 and 2. I do not see any error of law in such a calculation. Nor do I see an error of law in respect of category 4, metal wheel ball castors, of which there were no domestic sales in Taiwan. The Authority adopted Golden Ball's price to Taiwan Specco. But there was nothing irrational in the decision as Golden Ball's prices had otherwise been accepted as providing a reasonable basis.

That brings me to the question as to whether or not there was an error of law in the reliance placed upon the prices charged by Golden Ball. The reasons of the Authority could suggest that the Authority may not have adopted a fair basis of comparison to determine normal values for dumping purposes. The Authority said, inter alia:-

> "Customs obtained reliable information on the prices of castors sold for home consumption in Taiwan by three companies. This information indicated that selling prices by Golden Ball were higher than selling prices for the other two companies.
>
> However, Golden Ball sells castors to Taiwan Specco. Taiwan Specco then exports the castors to Australia The other companies, for which information is available on sales in Taiwan, do not export to Australia and do not supply castors for export to Australia.
>
> The quotations supplied by Golden Ball relate to sales to several companies at different times in 1991 and the quantities sold in Taiwan were similar to the quantities exported to Australia by Taiwan Specco.
>
> The Authority, like Customs, considers that the information relating to Golden Ball's sales in Taiwan is the most relevant to use in assessing normal values for castors in

categories 1 and 2 As a smaller number of models of castors are sold in Taiwan than are exported it was necessary to estimate the normal values for some models."

These passages fail to explain why Golden Ball's prices were adopted. Indeed, they state that Golden Ball's prices were higher than the prices of two other companies and that Golden Ball sold, inter alia, to Taiwan Specco, which was an exporter, whilst the other companies did not export to Australia.

Counsel for Caford submitted that these passages contained an error of law, for the distinction drawn between Golden Ball and other manufacturers in Taiwan could support only the conclusion that the prices at which Golden Ball sold were not as suitable for the calculation of dumping duty as were the prices of other manufacturers in Taiwan, whose sales were for domestic purposes and not for export. The thrust of counsel's point may be seen most clearly in relation to category 4 castors, that is metal ball castors. In relation to them, the price used by the Authority for calculating dumping margins was Golden Ball's price to Taiwan Specco in relation to castors which were produced for export and were exported to Australia. Counsel submitted that such a price would not provide a suitable base for the calculation of normal value.

It is certainly correct that, in the passage I have set out, the Authority discloses no reason as to why Golden Ball's prices were adopted as the basis of the calculation of dumping duty. Indeed, the passage discloses that the prices by Golden Ball were higher than the selling prices for two other manufacturers in Taiwan and that Golden Ball was involved in export which the other companies were not. However, no

challenge has been made to the Authority's report on the footing that its statement of reasons was inadequate. Accordingly, it is appropriate to consider the whole of the report of Customs and of the report of the Authority to determine whether, in respect of this point, the Authority erred in law.

In its report, the Authority noted that Golden Ball manufactured in Taiwan and sold castors both to Taiwan Specco which exported them to Australia and to other countries, and that Golden Ball also sold castors for home consumption in Taiwan. The Authority noted that Customs had taken the view that, "Other companies in Taiwan did not supply information which could be used to establish normal values." In relation to Golden Ball, the Authority noted that, "The company (Golden Ball) was visited by Customs during the earlier inquiry and detailed information on its selling prices in Taiwan and on its costs to make and sell the castors sold in Taiwan was provided." The Authority also noted that, "Customs was provided with information relating to a significant number of sales of castors in Taiwan. However, as individual companies did not supply detailed information on costs to make and sell, Customs was unable to assess whether these sales were profitable and in the ordinary course of trade." The Authority noted that, "The Authority considers that it is most unlikely that additional approaches to companies in Taiwan would yield further information" and that the information before it included "quotations by Golden Ball supported by evidence of actual sales of castors for home consumption made at the prices quoted and proof of payment of these prices".

An important paragraph in the Customs' report also shows that there was a difference in quality between the goods produced by Golden Ball and those produced by other Taiwanese manufacturers. Customs referred to Golden Ball as "the more expensive manufacturer". Customs' report went on to say:-

> "... the castors produced by the Australian industry are of a high quality. Therefore a comparison with the higher prices in the Taiwanese domestic market is appropriate. As a consequence, Customs has used the higher price assessed in its determination of normal value"

From these facts, it can be seen that it was open to the Authority to use the prices of Golden Ball as the basis for comparison, if it considered the comparison was a fair one. Golden Ball had been the most cooperative of the manufacturers and had given access to its books and records and to its documentary information. The figures which it provided had been verified to a greater extent than those provided by other manufacturers. Moreover, Golden Ball produced goods which were sold both on the domestic market and also to the exporter, Taiwan Specco, and its products were high quality products which were comparable with the castors produced in Australia. Finally, Golden Ball was not itself an exporter but sold its products in Taiwan and it did not appear that Taiwan Specco was other than an independent customer.

Thus, if the second paragraph of the passage from the Authority's reasons which I have set out above is read as referring to the comparability of Golden Ball's products because, being exported to Australia, they had a quality comparable to the castors manufactured in Australia, then the rationale for the adoption of Golden Ball's prices is clear enough.

In the end, the question is whether or not there was an error of law in the decisions of Customs and of the Authority. As the ultimate findings were negative findings, it seems to me that the matter has come down to this, that having regard to all the information that was obtained, neither Customs nor the Authority was satisfied that there was any significant damage to Australian industry from dumped products produced in Taiwan. Caford's material was rejected for reasons with which I need not deal and no other material emerged which led either Customs or the Authority to conclude there was a substantial export from Taiwan to Australia of castors at dumped prices. Much of the information before Customs and the Authority was not satisfactory or was not verified in all respects. Customs and the Authority therefore thought it proper to act under s.269TAC(6) rather than under s.269TAC(1) or (2). The decisions were founded on findings of fact made by Customs and the Authority which were open on the material and, on those findings, neither Customs nor the Authority considered that the dumping complaint should be upheld. I can see no error of law in the approach taken. The two reports leave me with the impression that there was no significant evidence before Customs or the Authority of dumping in Australia which caused significant damage to Australian industry.

Indeed, it was probably for this reason that most of counsel's emphasis was based on what was alleged to be lack of investigation. I have already given my reasons for concluding that there was no error in that respect.

For these reasons, I am of the view that the application should be dismissed with costs.

I certify that this and the preceding 17 pages are a true copy of the Reasons for Judgment of the Honourable Mr Justice Davies.

Associate: Michael Bay

Date: 24 November 1993

Counsel for the applicant:	Mr B. Walker and Mr N. Nichols
Solicitor for the applicant:	C.G. Gillis & Co.
Counsel for the respondents:	Mr A. Robertson and Miss N. Abadee
Solicitor for the respondents:	Australian Government Solicitor
Date of hearing:	18 October 1993
Date of judgment:	24 November 1993