JUDGMENT No. 883 / 94

CATCHWORDS

ADMINISTRATIVE LAW - Judicial review - Report by Anti-Dumping Authority in relation to alleged dumping of goods exported from Singapore - Report prepared on Authority's own initiative - Recommendation that dumping duty notice issue - Whether recommendation amounts to a decision reviewable under *Administrative Decisions (Judicial Review) Act* 1977 (Cth)

CUSTOMS - Dumping duty - Goods exported to Australia from Singapore - Determination of normal values - Whether Minister entitled to be satisfied that sufficient information not available to ascertain normal values under particular statutory provisions - Whether Minister failed to take into account relevant considerations or took into account irrelevant considerations - Whether Minister's decision so unreasonable that no reasonable person would have made it - Whether normal values determined by the Minister so unreasonable that no reasonable person could have determined those amounts - Whether dumping duty notice might be expressed to apply to all goods exported from Singapore rather than goods exported by a particular exporter - Whether determination that material injury to the Australian industry was caused or threatened by exports from Singapore at dumped prices was so unreasonable that no reasonable person could have arrived at it - Whether Minister bound to take into account possible effects of economic recession during period under review

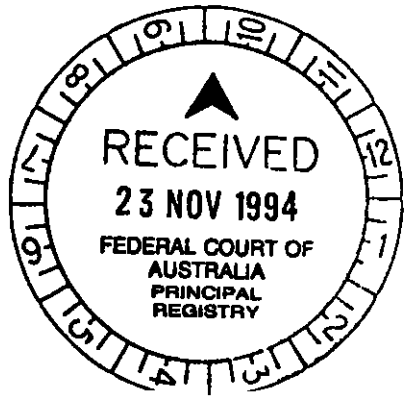
Administrative Decisions (Judicial Review) Act 1977 (Cth), s 5
Customs Act 1901 (Cth), ss 269TAC(2)(c) and (6), 269TP
Anti-Dumping Authority Act 1988 (Cth), s 9(2)

Ross v Costigan (1982) 41 ALR 319 applied
Edelsten v Health Insurance Commission (1990) 27 FCR 56 applied
Excell v Harris (1983) 51 ALR 137 applied
Enichem Anic Srl v Anti-Dumping Authority (1992) 39 FCR 458 applied

VREDELCO FOOD INDUSTRIES PTE LIMITED v ANTI-DUMPING AUTHORITY and ORS

No. ACT G 12 of 1994

Neaves J.
Canberra
22 November 1994



IN THE FEDERAL COURT OF AUSTRALIA)
)
AUSTRALIAN CAPITAL TERRITORY)
) No. ACT G 12 of 1994
DISTRICT REGISTRY)
)
GENERAL DIVISION)

BETWEEN: VREDELCO FOOD INDUSTRIES PTE LIMITED

Applicant

AND: ANTI-DUMPING AUTHORITY

First Respondent

CHRISTOPHER CLELAND SCHACHT in his capacity as Minister of State for Science and Small Business

Second Respondent

MEADOW LEA FOODS LIMITED

Third Respondent

MINUTE OF ORDER

JUDGE MAKING ORDER : Neaves J.

DATE OF ORDER : 22 November 1994

WHERE MADE : Canberra

THE COURT ORDERS THAT:

1. The application be dismissed.

2. The applicant pay the respondents' costs of and incidental to the application.

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

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First Respondent

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MEADOW LEA FOODS LIMITED

Third Respondent

CORAM: Neaves J.

DATE: 22 November 1994

REASONS FOR JUDGMENT

This is an application by Vredelco Food Industries Pte Limited ("Vredelco") under s.5 of the *Administrative Decisions (Judicial Review) Act* 1977 (Cth) ("the Judicial Review Act"). The first respondent to the application is the Anti-Dumping Authority ("the Authority") established by s.4 of the *Anti-Dumping Authority Act* 1988 (Cth). The second respondent is Christopher Cleland Schacht, the Minister of State for Science and Small Business ("the Minister"). The third respondent is Meadow Lea Foods Limited ("Meadow Lea").

The application is supported by the several affidavits of John Francis McDermott sworn respectively on 9 February 1994, 27 May 1994 and 29 July 1994. No affidavits in reply have been filed on behalf of any of the respondents and the matter has proceeded on the basis of Mr McDermott's affidavits and on an agreed bundle of documents (Exhibit "A"), it being common ground that the bundle represents "part of the material that was before the decision-maker". The only oral evidence before the Court is that of Mr McDermott who was cross-examined by counsel who appeared for the Authority and the Minister and by counsel for Meadow Lea. What is stated in those affidavits, particularly the affidavit sworn on 29 July 1994, is to be read subject to the answers Mr McDermott gave in cross-examination.

Before proceeding further, it is desirable to mention a collateral matter. As appears from the affidavits to which I have referred, Mr McDermott was, during 1993 and until 30 May 1994, employed by the solicitors for Vredelco as a Customs Adviser and, as such, he was involved in various aspects of the preparation of the matter before the Court. His affidavit sworn on 29 July 1994 refers to his undertaking, in May 1994, of "an assessment of available information to determine the profit margin apparently applied by the Anti-Dumping Authority to the Applicant's [Vredelco's] products in making its findings" and states that, in making that assessment, he had access to "Annexure 'A' to the Australian Customs Report to the Anti-Dumping Authority on its

verification visit to" Vredelco. A copy of that document is annexed to the affidavit as Annexure "A".

When the hearing commenced, counsel for the Authority and the Minister raised the question whether Mr McDermott had been given access to the document marked as Annexure "A" to his affidavit sworn on 29 July 1994 in breach of undertakings given to the Court by the legal advisers of Vredelco. Provision for the giving of such undertakings was made at a directions hearing on 16 March 1994. An order was then made, by consent, to the effect that the Authority and the Minister allow counsel for, and the legal advisers of, Vredelco to inspect the documents held by the Authority and the Minister relating to the proceeding providing such counsel and legal advisers had signed, filed and served an appropriate form of undertaking: see *Kanthal Australia Pty Ltd v Minister for Industry, Technology and Commerce* (1987) 14 FCR 90 and *Commonwealth v Northern Land Council* (1991) 30 FCR 1 at p.30. The form of undertaking required, *inter alia*, that, pending further order of the Court and except with the prior written consent of the Authority and the Minister, the counsel or legal adviser giving the undertaking would not disclose, or permit to be disclosed, or discuss any "Confidential Information" to or with any person other than a person who had signed, filed in the Court and served on the Authority and the Minister (or their solicitors) an undertaking in similar terms. "Confidential Information" was defined as follows:

> "'Confidential Information' means any information described as confidential in the Lists of Documents prepared by the First and Second Respondents and provided by the First and Second Respondents to the Applicant in these proceedings but NOT INCLUDING information confidential to the Applicant."

Counsel for the Authority and the Minister informed the Court that, although most of the information contained in Annexure "A" to the affidavit sworn on 29 July 1994 was confidential to Vredelco, the annexure included information that was confidential to a company other than Vredelco. It was submitted that, as Mr McDermott was not a person who had signed an undertaking, there had been a breach of the undertakings given to the Court. Counsel referred to certain correspondence between the Australian Government Solicitor and the solicitors for Vredelco relating to the matter, that correspondence being verified in the affidavit of Simon Banks sworn on 7 October 1994.

In that correspondence, the solicitors for Vredelco said they had considered that the use of the information that was confidential to the other company was not a use in breach of the undertakings. The solicitors stated that that information had come into their possession when they, at an earlier time, were advising that company. It was further stated that the solicitors had obtained an authorisation from that company in relation to the use of its material. It must be said, however, that the copies of correspondence between the solicitors and that company to which the solicitors referred does not support the assertion that the solicitors

were authorised to use the information in relation to the present proceeding. What the correspondence authorised did not extend beyond making the information available to the Court. Counsel for Vredelco, however, conceded that what had occurred amounted to a breach of the undertakings though he sought to categorise the breach as technical.

Although such of the information contained in Annexure "A" to Mr McDermott's affidavit sworn on 29 July 1994 as was confidential to the other company may have been available to the solicitors in other circumstances, I am satisfied that the making of the document available to Mr McDermott involved a breach of the undertakings to the Court to which reference has been made.

While it has not been suggested that any further action should be taken by the Court in respect of the breach, it must be emphasised that it is essential that there be strict compliance with any undertaking given to the Court. There should be no departure from such an undertaking, even if the departure be thought to be slight, or technical, or apparently insignificant, unless the departure has been sanctioned by an order of the Court made with knowledge of the whole of the relevant circumstances.

I return to a consideration of the application which is expressed to be an application to review the decision of:

"1. The First Respondent of November 1993 contained in Report No.113 to make certain recommendations to the Second Respondent;

2. The Second Respondent of 30 November 1993 notified to the Applicant [Vredelco] on 22 December 1993 declaring, pursuant to section 269TG(2) of the Customs Act 1901, that section 8 of the Customs Tariff (Anti-Dumping) Act 1975 applies to certain goods exported from Singapore and ascertaining the normal values, export prices and non-injurious prices for those goods; and

3. The Second Respondent of 30 November 1993 notified to the Applicant [Vredelco] on 22 December 1993 directing, pursuant to section 8(5) of the Customs Tariff (Anti-Dumping) Act 1975, the amount of interim dumping duty payable on the export of certain goods from Singapore to Australia."

The goods in question are refined edible vegetable oils in retail packs up to and including 6 litres. Edible vegetable oils are used in cooking oil, in margarine, as a filler in tinned foods and in a number of other applications. The oils are soya bean oil, sunflower oil, rape seed (canola) oil and blends of edible vegetable oils.

Vredelco is a company that manufactures and distributes edible vegetable products world wide. It exports to Australia soya bean and sunflower oils in 750 ml containers, rape seed oil (canola oil) in containers of 750 ml, 2 litres and 4 litres and blended vegetable oil in containers of 750 ml, 1 litre, 2 litres and 4 litres. It does not sell those goods in Singapore nor does it export them to third countries. Vredelco is a wholly owned subsidiary of Vredelco Investments Pte Limited, as is Wintercorn Edible Products Pte Limited.

The circumstances which led to the institution of the proceeding before the Court are as follows. On 23 November 1992, an application pursuant to subs.269TB(1) of the *Customs Act* 1901 (Cth) requesting that the Minister publish a dumping duty notice or a countervailing duty notice in respect of the goods in question imported from Singapore and Malaysia was lodged with the Australian Customs Service ("Customs") by KPMG Peat Marwick ("KPMG") representing The Australian Oilseeds Federation Incorporated. It is unnecessary for present purposes to refer further to the imports from Malaysia.

The application under subs.269TB(1) alleged that imported generically and brand labelled edible vegetable oils were causing and threatening material injury to that part of the Australian oilseeds industry that refines edible vegetable oil (or purchases refined edible vegetable oil) and packages the refined oil in containers of up to 6 litres for retail sale. Meadow Lea is a company that engages in that activity. The application identified the main problem as being that imported low priced generically labelled oil forced down the prices of local generic oil and, in turn, the prices of brand oils which enjoyed a price premium.

On 29 March 1993, a delegate of the Comptroller-General of Customs ("the Comptroller"), after holding an inquiry into the allegations, made preliminary findings pursuant to s.269TD of the Customs Act that there were not

sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the subject goods exported to Australia from Singapore. Those preliminary findings were made after the delegate concluded, in respect of the subject goods, that exports from Singapore had been at dumped prices, that exports from Singapore were causing injury, but not material injury, to the Australian industry producing like goods and that exports from Singapore represented a threat of injury, though not material injury, to that Australian industry.

By a facsimile message dated 20 April 1993, KPMG, pursuant to s.269TF, requested the Authority to review the negative preliminary finding by the delegate of the Comptroller. In conducting that review, the Authority was confined to a consideration of the information that was available to the Comptroller at the time the preliminary finding was made (see Anti-Dumping Authority Act, subs.8(3)). On 21 June 1993, the Authority found that edible vegetable oils had been exported to Australia from Singapore at dumped prices and that the Australian industry producing like goods had suffered material injury, but that there was insufficient information to conclude that the dumping had caused, or threatened to cause, the material injury to the Australian industry producing like goods. In those circumstances, the Authority regarded itself as having no option but to confirm the negative preliminary finding but considered, on the basis of the information before it, that it had been unable to make

a truly informed decision. The Authority decided that, in the interests of all parties to the preliminary finding, it would initiate, under subs.9(2) of the Anti-Dumping Authority Act, its own inquiry into whether dumping or subsidisation of edible vegetable oils that are sold as cooking oils had caused (or was threatening) material injury to the Australian industry producing edible vegetable oils. Subsection 9(2) provides:

> "(2) The Authority may, where it considers it appropriate to do so, consider and prepare and give to the Minister a report on any anti-dumping matter."

In November 1993, the Authority gave to the Minister Report No.113 concluding, so far as is relevant for present purposes, that:

> ". there is no evidence that exports of edible vegetable oil to Australia from Singapore .... have been subsidised;
>
> . edible vegetable oil has been exported to Australia from Singapore .... at dumped prices;
>
> . the Australian industry producing like goods has suffered material injury;
>
> . dumping of edible vegetable oils by exporters in Singapore .... has caused material injury to the local industry producing like goods; and
>
> . there is a threat of material injury to the Australian industry from future imports of edible vegetable oils at dumped prices from Singapore ....
>
> In light of the above, the Authority recommends that the Minister take anti-dumping action against imports of edible vegetable oils from Singapore .... Further details of the Authority's recommendations are at Chapter 11."

Chapter 11 of the Report, headed "Recommendations", contained the following:

> "The Authority recommends that the Minister be satisfied that:
>
> . sufficient information has not been furnished or is not available to enable the normal value of edible vegetable oil to be ascertained under subsections 269TAC(1) or (2) of the *Customs Act 1901*, and that he determine normal values for Singapore .... under subsection 269TAC(6) of the *Customs Act 1901*;
>
> . sufficient information has not been furnished or is not available to enable the export price of certain edible vegetable oils to be ascertained under paragraph 269TAB(1)(a), (b) or (c) of the *Customs Act 1901*;
>
> . the amount of the export price of edible vegetable oil is less than the amount of the normal value of those goods and, because of that, material injury to the Australian industry producing edible vegetable oils is being caused; and
>
> . the amount of the export price of edible vegetable oil that has already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of edible vegetable oil that may be exported to Australia in the future may be less than the normal value of the goods and, because of that, material injury to the Australian industry producing edible vegetable oil is threatened.
>
> The Authority recommends that the Minister:
>
> . determine export prices for certain edible vegetable oils exported to Australia from Singapore under paragraph 269TAB(1)(c) and under subsection 269TAB(3) of the *Customs Act 1901*;
>
> ....
>
> . pursuant to subsection 269TG(2) of the *Customs Act 1901*, declare, by notices in the *Gazette*, that section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* applies to edible vegetable oil that is exported from Singapore .... to Australia after the date of publication of the notices, and the amount of the export price of which is less than the amount of the normal value;

- pursuant to subsection 8(5) of the *Customs Tariff (Anti-Dumping) Act 1975*, direct that the element of interim dumping duty referred to in paragraph 8(4)(a) of the *Customs Tariff (Anti-Dumping) Act 1975*, for edible vegetable oil be ascertained by reference to a measure of the quantity (litre) of the goods;

- ascertain, for the purposes of the interim dumping duties, the normal values, the export prices and the non-injurious prices at Confidential Attachment 10; and

- publish legal instruments under subsection 269TG(2) of the *Customs Act 1901* and under subsection 8(5) of the *Customs Tariff (Anti-Dumping) Act 1975*, (relating to the element of interim dumping duty)."

It is unnecessary for present purposes to refer to Confidential Attachment 10.

On 30 November 1993, the Minister signed a declaration pursuant to subs.269TG(2) of the Customs Act and a direction pursuant to subs.8(5) of the Customs Tariff (Anti-Dumping) Act. The declaration read as follows:

> "I, CHRISTOPHER CLELAND SCHACHT, Minister of State for Science and Small Business, pursuant to subsection 269TG(2) of the *Customs Act 1901*, am satisfied that in respect of refined edible vegetable oils (canola, soya bean, sunflower and blends) in retail packs up to and including 6 litres (hereinafter referred to as the 'goods') exported from Singapore to Australia, that:
>
> (a) the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, 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 of the goods; and
>
> (b) because of that, material injury to an Australian industry producing like goods has been caused and is threatened;

and, therefore, hereby DECLARE that section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* applies to like goods

(a) that are exported to Australia from the above mentioned country after the date of publication of this Notice; and

(b) the amount of the export price of which is less than the amount of its normal value

and hereby ASCERTAIN that the normal values, export prices and non-injurious prices for the goods are those amounts set out in the Table attached."

The direction read:

"I, CHRISTOPHER CLELAND SCHACHT, Minister of State for Science and Small Business, pursuant to subsection 8(5) of the *Customs Tariff (Anti-Dumping) Act 1975* (the Act) hereby DIRECT, after having regard to subsection 8(5A), that the element of the interim dumping duty payable on refined edible vegetable oils (soya bean, sunflower, canola and blends) in retail packs up to and including 6 litres (hereinafter referred to as the 'goods') as shown in Columns 1 and 2 of the Table attached exported from Singapore to Australia shall be the amount shown in Column 3 of the Table attached being the difference between the non-injurious price of the goods of that kind as ascertained and the export price of the goods of that kind as ascertained.

The interim dumping duty applies to goods entered for home consumption from the date of publication of this Notice."

It is unnecessary for present purposes to reproduce the tables referred to in the declaration and the direction respectively. The declaration and the direction were published in the *Commonwealth of Australia Gazette* on 22 December 1993.

In the light of the authoritative exposition by the High Court in *Australian Broadcasting Tribunal v Bond* (1990)

170 CLR 321 of the essential features of a reviewable decision under s.5 of the Judicial Review Act and the absence of any legislative provision making subs.3(3) of that Act applicable (see *Ross v. Costigan* (1982) 41 ALR 319 at p.332 and *Edelsten v Health Insurance Commission* (1990) 27 FCR 56 at p.70), the Authority clearly made no decision which is reviewable in the present proceeding. However, it is common ground that the Minister made no independent inquiries into the subject matter of the declaration and direction to the text of which reference has already been made but accepted and acted upon the recommendations of the Authority in that regard. It follows that, if what the Authority did was contrary to the legal principles applicable, the decisions made by the Minister, which are admittedly reviewable decisions under the Judicial Review Act, will be equally tainted: *Excell v Harris* (1983) 51 ALR 137 at p.159.

Section 8 of the Customs Tariff (Anti-Dumping) Act relevantly provides:

> "8. (1) ....
>
> (2) There is imposed, and there must be collected and paid, on goods to which this section applies by virtue of a notice under subsection 269TG(1) or (2) of the Customs Act, a special duty of Customs, to be known as dumping duty calculated in accordance with subsection (6).
>
> (3) Pending final assessment of the dumping duty payable on goods the subject of a notice under subsection 269TG(1) or (2) of the Customs Act, an interim dumping duty is payable on those goods.
>
> (4) Subject to subsection (5), the interim dumping duty payable on goods the subject of a notice under

subsection 269TG(1) or (2) of the Customs Act is an amount equal to the sum of:

(a) the difference between the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice and the normal value of goods of that kind as so ascertained, or last so ascertained; and

(b) if the export price of those particular goods is lower than the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice - the amount by which the latter export price exceeds the former.

(5) The Minister must, by signed notice, direct that the element of interim dumping duty referred to in paragraph 4(a) in respect of particular goods be ascertained:

(a) as a proportion of the export price of those particular goods or of the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the dumping duty notice, whichever is the greater; or

(b) by reference to a measure of the quantity of those particular goods; or

(c) by reference to a combination of a proportion of the kind referred to in paragraph (a) and a measure of the quantity of those particular goods;

and the notice has effect accordingly.

(5A) The Minister must, in exercising his or her powers under subsection (5) in respect of particular goods the subject of a notice under subsection 269TG(1) or (2), if the non-injurious price of goods of that kind as ascertained or last ascertained by the Minister for the purposes of the notice is less than the normal value of goods of that kind as so ascertained, or last so ascertained, have regard to the desirability of fixing a lesser amount of duty such that the sum of:

(a) the export price of goods of that kind as so ascertained or last so ascertained; and

(b) that lesser duty;

does not exceed that non-injurious price.

....

(6) The dumping duty payable on goods the subject of a notice under subsection 269TG(1) or (2) of the Customs Act is an amount equal to:

(a) unless paragraph (b) applies - the difference between the amounts that the Minister ascertains to be the export price and the normal value of those particular goods; or

(b) if, in a notice under subsection (5), the Minister determines that the whole or a part of the interim dumping duty payable on those particular goods is to be ascertained by reference to the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the first-mentioned notice - the difference between:

(i) the amount that the Minister ascertains to be the export price of those particular goods; and

(ii) the lower of the amount that the Minister ascertains to be the normal value of those particular goods and that non-injurious price.

...."

Sub-section 269TG(1) of the Customs Act, which concerns goods that have been exported to Australia, provides:

"(1) Subject to section 269TN, where the Minister is satisfied, as to any goods that have been exported to Australia, that:

(a) the amount of the export price of the goods is less than the amount of the normal value of those goods; and

(b) because of that:

(i) material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered; or

(ii) in a case where security has been taken under section 42 in respect of any interim duty that may become payable on the goods under section 8 of the Anti-Dumping Act - material injury to an Australian industry producing like goods would or might have been caused if the security had not been taken;

the Minister may, by notice published in the *Gazette*, declare that section 8 of that Act applies to those goods."

Sub-section 269TG(2) concerns goods that may be exported to Australia in the future. It provides:

"(2) Where the Minister is satisfied, as to goods of any kind, that:

(a) the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, 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 of the goods; and

(b) because of that, material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered;

the Minister may, by notice published in the *Gazette* (whether or not he or she has made, or proposes to make, a declaration under subsection (1) in respect of like goods that have been exported to Australia), declare that section 8 of the Anti-Dumping Act applies to like goods:

(c) that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice; and

(d) the amount of the export price of which is less than the amount of their normal value."

Section 269TN is not relevant for present purposes. The expression "like goods" is defined in s.269T to mean 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.

Subsection (3) of s.269TG provides:

> "(3) Where:
>
> (a) a notice under subsection (1) declares particular goods to be goods to which section 8 of the Anti-Dumping Act applies; or
>
> (b) a notice under subsection (2) declares like goods in relation to goods of a particular kind to be goods to which that section applies;
>
> the notice must, subject to subsection (3A), include a statement of the respective amounts that the Minister ascertained, at the time of publication of the notice:
>
> (c) was or would be the normal value of the goods to which the declaration relates; and
>
> (d) was or would be the export price of those goods; and
>
> (e) was or would be the non-injurious price of those goods."

It is unnecessary to refer to the terms of subs.(3A).

Section 269TAB of the Customs Act deals with the ascertainment of the export price of goods, s.269TAC with the ascertainment of the normal value of goods, s.269TACA with the ascertainment of the non-injurious price of goods exported to Australia and s.269TAE with the question whether material

injury to an Australian industry has been, or is being, caused or is threatened.

The challenge to the decisions made by the Minister turn on the determination of the normal value of the subject goods and the conclusion that material injury to an Australian industry producing like goods has been caused and is threatened by the importation of the subject goods from Singapore.

The Determination of Normal Values

Section 269TAC relevantly provides:

> "(1) Subject to this section, for the purposes of this Part, the normal value of any goods exported to Australia is the price paid for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.
>
> (2) Subject to this section, where the Minister:
>
> (a) is satisfied that:
>
> (i) by reason of the absence of sales that would be relevant for the purpose of determining a price under subsection (1); or
>
> (ii) by reason that the situation in the relevant market is such that sales in that market that would otherwise be relevant for the purpose of determining a price under subsection (1) are not suitable for use in determining such a price;
>
> the normal value of goods exported to Australia cannot be ascertained under subsection (1); or
>
> (b) is satisfied, in a case where like goods are not sold in the ordinary course of trade for home consumption in the country of export in

sales that are arms length transactions by the exporter, that it is not practicable to obtain, within a reasonable time, information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1);

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

(c) except where paragraph (d) applies, the sum of:

(i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and

(ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export:

(A) such amounts as the Minister determines would be the delivery charges and other costs necessarily incurred in that sale; and

(B) subject to subsection (13), an amount calculated in accordance with such rate, if any, as the Minister determines would be the rate of profit on that sale; or

(d) where the Minister so directs, the price determined by the Minister to be representative of the price paid for like goods sold in the ordinary course of trade in the country of export for export to a third country, being sales that are arms length transactions.

....

(6) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the preceding subsections, the normal value of those goods is such amount as is determined by the Minister having regard to all relevant information.

(7) For the purposes of subsection (6), the Minister may disregard any information that he or she considers to be unreliable.

(8) Where the normal value of goods exported to Australia is the price paid for like goods and that price and the export price of the goods exported:

(a) relate to sales occurring at different times; or

(b) are not in respect of identical goods; or

(c) are modified in different ways by taxes or the terms or circumstances of the sales to which they relate;

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

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

...."

Subsection (1) of s.269TAA provides:

"(1) For the purposes of this Part, a purchase or sale of goods shall not be treated as an arms length transaction if:

(a) there is any consideration payable for or in respect of the goods other than their price; or

(b) the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or

(c) in the opinion of the Minister the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price."

In its Report No.113, the Authority noted that, during the preliminary inquiry, Vredelco had informed Customs that it did not sell the goods under reference on the domestic

market in Singapore with the consequence that normal values could not be assessed under subs.269TAC(1). The Report omits to state that Vredelco had also informed Customs (as appears from the Customs Report No.93/5 of its preliminary findings and the Authority's Report No.101 upon the review of those findings) that there were no sales of like goods in Singapore, it being necessary to negative the making of such sales by sellers other than Vredelco before it could be concluded that subs.269TAC(1) was not applicable. The Authority also noted that, on the information supplied during the preliminary inquiry, normal values could not be assessed under par.269TAC(2)(c) or par.269TAC(2)(d), the latter paragraph being inapplicable because there were no sales to third countries. In relation to par.269TAC(2)(c), the Authority said:

> "The information that the company provided to Customs dealt with the costs to make and sell the goods exported to Australia and the profit achieved on those export sales: adding up these costs and profits amounts to a 'reconstruction' of the export price rather than to the construction of a normal value. No information was available to show the delivery and other costs that would have been incurred in domestic sales or the amount of profit that would have been made on domestic sales."

The Authority then stated that additional information had been supplied by Vredelco since the preliminary inquiry had been concluded, including information that, while Vredelco did not sell edible vegetable oil in retail packs in Singapore, Wintercorn Edible Products Pte

Limited ("Wintercorn"), described as a sister company of Vredelco, did so. Report No.113 continued:

> "Because Wintercorn's domestic sales are subject to rebates, the Authority considered that the sales are not arms length transactions and that, therefore, normal values could not be assessed under subsection 269TAC(1) of the Act.
>
> The company provided no evidence of sales to third countries in its submission or at the verification visit. The Authority was, therefore, unable to assess normal values under paragraph 269TAC(2)(d) of the Act....
>
> Vredelco provided the Authority with detailed information on its costs to make and sell, with actual profits achieved on its total operations (involving mainly bulk oil sales), and with estimates of the profit it normally expects to achieve and of the profit the Singaporean industry could expect to achieve from selling oils in retail packs.
>
> The Authority compared the normal values which would result from the company's cost to make and sell and profit information with Sime Darby's selling prices and with the applicant's information on prices in Singapore. The comparison revealed that the normal values would be significantly below the prices provided by both Sime Darby and the applicant. The Authority considered that the normal values may be low because of the amount of profit estimated by the company.
>
> The Authority, therefore, contacted the consultant for Vredelco to see if Vredelco could demonstrate that normal values assessed under paragraph 269TAC(2)(c) of the Act would reflect actual selling prices. Vredelco provided two Wintercorn invoices for domestic sales of 2 kg bottles of soya bean oil. The price in both invoices was similar to those provided by Sime Darby and by the applicant. The Authority, therefore, considered that normal values assessed under paragraph 269TAC(2(c) of the Act would be understated and, therefore, not relevant.
>
> The Authority has assessed normal values for both Vredelco and Wintercorn under subsection 269TAC(6) of the Act, based on the applicant's information. The Authority did not assess normal values on the basis of the two Wintercorn invoices because information available to the Authority indicates that 2 litre bottles (similar in size to the 2 kg bottles sold on the Singaporean market) of soya bean oil are not exported to Australia by Vredelco."

The references to "the applicant" and to "the applicant's information" are references to The Australian Oilseeds Federation Incorporated and to the information supplied by it. The references to "Sime Darby" are references to Sime Darby Edible Products Limited, a company carrying on business in Singapore. I shall refer to that company as "Sime Darby". Sime Darby's main activities are the refining and packaging of edible vegetable oils for sale in Singapore and for export to most parts of the world. It exports to Australia soya bean oil in containers of 2 litres and 4 litres, sunflower oil in containers of 2 litres and blended vegetable oils in containers of 2 litres, 3 litres and 4 litres.

The principal submission advanced by counsel on behalf of Vredelco was that the Minister had erred in law in ascertaining the normal value of the subject goods under the provisions of subs.269TAC(6), it being contended that such values should have been ascertained under par.269TAC(2)(c). It was submitted that it was appropriate for the Minister to ascertain the normal value of the goods in question under the provisions of subs.269TAC(6) if, and only if, in terms of that subsection, he was satisfied that sufficient information had not been furnished or was not available to enable the normal value of the goods to be ascertained under par.269TAC(1) or par.269TAC(2)(c). It was, however, conceded that par.269TAC(1) was not applicable. It was submitted that, in determining that sufficient information was not available to enable a determination to be made under par.269TAC(2)(c), the

Authority, and in turn the Minister, failed to take into account relevant considerations in that, in comparing "the normal values which would result from the company's [Vredelco's] cost to make and sell and profit information" with "Sime Darby's selling prices", there was a failure to take into account -

(a) that the Sime Darby selling prices were only invoice prices which had not been verified in the sense that there was no proof that the prices shown on the invoices had actually been paid by the customer;

(b) that, in the context of ascertaining the normal value of containers of 2 litres of soya bean oil and sunflower oil exported to Australia by Sime Darby, the Authority had expressed itself as not being satisfied that the evidence of sales provided by that company referred to in (a) above was "sufficiently reliable" to meet the requirements of subs.269TAC(1);

(c) that the information provided as to "Sime Darby's selling prices" made no allowance for rebates and "give-aways" which may have been made available to customers by that company"; and

(d) that the Authority had before it a detailed break-down of the Wintercorn invoices.

Conversely, it was submitted that, in taking into account the Sime Darby selling prices, the Authority and the Minister took into account an irrelevant consideration because those selling prices were not verified and were treated by the Authority as not being "sufficiently reliable" to meet the requirements of subs.269TAC(1) when ascertaining the normal value of Sime Darby's goods. The submission was also made that the decision that normal values could not be determined in accordance with

the provisions of par.269TAC(2)(c) was so unreasonable that no reasonable person could have made it.

In my opinion, there was ample justification for the conclusion by the Minister, in terms of subs.269TAC(6), that he was satisfied that sufficient information had not been furnished or was not available to enable the normal value of the goods to be ascertained under par.269TAC(2)(c). The normal value of the goods could have been ascertained under that paragraph only if the Minister had sufficient information to enable a determination to be made -

> (a) of the amount that represented the cost of production or manufacture of the goods in Singapore; and
>
> (b) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in Singapore -
>
> (i) of an amount representing the delivery charges and other costs necessarily incurred in that sale; and
>
> (ii) of the rate of profit referable to such a sale.

It is clear from its report No.101 made in June 1993 upon its review of the negative preliminary finding by Customs that the Authority was satisfied that the information then available to it was not sufficient to enable the necessary determinations to be made under par.269TAC(2)(c). The Authority said:

> "The information that the company provided to Customs dealt with the costs to make and sell the goods exported

> to Australia and the profit achieved on those export sales: adding up these costs and profits amounts to a 'reconstruction' of the export price rather than to the construction of a normal value. No information was available to show the delivery and other costs that would have been incurred in domestic sales or the amount of profit that would have been made on domestic sales."

An examination of the material that was then before the Authority demonstrates that the conclusion to which it came was one that was reasonably open to it.

Subsequently, further material was made available to the Authority on behalf of Vredelco. Under cover of a letter dated 18 August 1993, Vredelco's solicitors made a submission to the Authority which included a document referred to as containing "a breakdown of cost to manufacture vegetable oils in Singapore". The letter contained the following assertion the correctness of which was not accepted by Customs or the Authority:

> "All these costs have been verified by Customs from invoice and payment details to banks. Direct labour, fixed overheads, administration, finance and selling expenses have been derived and verified by Customs from company accounts."

The relevant attachment to the letter, and the later revised version of the attachment, could properly have been seen by the Authority, as indeed they appear to have been seen, as failing to provide the detailed material necessary to remedy the deficiencies that were identified in the material previously provided. In particular, the view was taken that

the further material did not provide details of the delivery charges and other costs that would necessarily have been incurred if the goods had been sold on the domestic market. It was, indeed, confirmed by Mr Sundstrom, an officer of Customs, in a telephone conversation with Mr John Arndell, an officer of the Authority, on 26 August 1993 that the selling and administration expenses put forward by Vredelco had no other foundation than that company's profit and loss statement for its total operations which, as appears elsewhere in the material, consisted in the main of sales in bulk, not sales in retail packs.

By a memorandum dated 18 October 1993, Vredelco provided two sample invoices evidencing domestic sales of 2 kg containers of soya bean oil by Wintercorn and a costing sheet in respect of such oil. The costing sheet showed that the cost of manufacturing and selling the goods was significantly higher than the costs set out in the material provided by Vredelco to which I have referred.

It must be accepted that the Authority's Report No.113 does not specifically refer to the absence of sufficient details of the costs that would have been incurred in domestic sales in Singapore of the subject goods had such sales been made. However, I am unable to conclude from the absence of such specific reference that the Authority had resiled from the view it had expressed in Report No.101 and concluded that it had sufficient information before it to

enable a determination to be made under par.269TAC(2)(c) of the costs to manufacture and sell the goods on the domestic market in Singapore. It is clear that, if the Authority did continue to hold the view expressed in Report No.101, it would have had no basis for determining the normal value of the goods under par.269TAC(2)(c).

What the Authority emphasised in Report No.113 was the absence of sufficient information to enable a determination to be made as to the rate of profit referable to the sale of the goods on the domestic market in Singapore on the assumption that such sales were made. Having expressed that view, a view that on a consideration of the material before the Authority was, in my opinion, reasonably open to it, the Authority concluded, as appears from the extract from the report set out earlier in these reasons, that the total of the costs of production provided by Vredelco, the estimates made by that company of direct labour costs, fixed overheads and selling and administration expenses and the company's estimate of profit on assumed domestic sales gave prices which were well below the range of prices which appeared to have been paid for like goods in Singapore based on the information supplied by Sime Darby, the prices evidenced by the invoices of Wintercorn and the information supplied by The Australian Oilseeds Federation Incorporated, the latter information being information as to cooking oil prices provided by Cold Storage Trading, a division of Cold Storage Singapore (1983) Pte Limited, and by NTUC Fairprice Co-operative Limited.

Further, it is not correct to say that the Authority's conclusion that normal values could not be ascertained under par.269TAC(2)(c) was based simply on its concern about the rate of profit properly referable to domestic sales of the subject goods. It was clearly concerned with the question whether Vredelco could demonstrate that the constructed normal values for which it contended bore a reasonable relationship to actual selling prices.

Earlier in these reasons I have identified the four considerations which Vredelco contends that the Authority failed to take into account in determining that normal values could not be determined under par.269TAC(2)(c). As to the first of those considerations, there can be no doubt that the Authority was well aware that there had been no verification that the customers of Sime Darby had paid the prices shown on the invoices produced by that company. That, however, was not a circumstance which required that the information contained in the invoices be disregarded when considering whether par.269TAC(2)(c) was the appropriate provision to apply in ascertaining the normal value of the goods in question. It was a matter for the Authority to determine whether it would rely on those invoices and, if it decided to do so, to determine what weight it should give to them.

In relation to the second of the considerations which Vredelco contends was not taken into account, I am of opinion that the fact that the Authority was not prepared to

regard the invoices as sufficient to enable it to determine under the provisions of subs.269TAC(1) normal values for goods exported by Sime Darby did not preclude the Authority from having regard to those invoices in order to test whether the normal values constructed by Vredelco under par.269TAC(2)(c) could be accepted.

As to the third consideration relied on by Vredelco, it would have been reasonably open to the Authority to have taken the view that the material before it did not establish that Sime Darby was engaged in the practice of giving rebates or "give-aways" to its customers. The only material before the Authority to which counsel for Vredelco could point in support of the contention that allowances of that nature "may have been made available" to customers by Sime Darby was the following statement in the memorandum of Mr Sundstrom dated 26 February 1993 relating to the ascertainment of normal values in respect of Sime Darby's goods:

> "It was also claimed that prices to all domestic customers are the same with no discounting for volume. The only concession given is for special promotions when bonus goods (e.g. 1 extra carton for every 4 cartons purchased) are supplied. However it was also claimed that if any domestic customer were to purchase similar quantities to those of Australian customers discounts would be given. The company was unable to positively quantify this claim."

It is to be noted that that statement was made in the context of considering whether normal values for Sime Darby's goods

could properly be determined under subs.269TAC(1), Mr Sundstrom concluding that they could.

It must also be remembered that the exercise in which the Authority was engaged was to test whether the constructed normal values put forward by Vredelco could be accepted and, as part of that process, to compare those constructed normal values with the prices at which the subject goods were sold on the domestic market in Singapore. The prices charged by Sime Darby were only part of the material on which the Authority relied: it specifically referred in Report No.113 to information concerning prices in Singapore provided by the two companies to which I have referred. It also had the invoices from Wintercorn. What appears to have been significant from the Authority's viewpoint was the degree of consistency between the prices evidenced by that material and the size of the discrepancy between the range of prices so disclosed and the constructed normal values. Whether Sime Darby made available to its customers rebates or "give-aways" was not of significance in the process in which the Authority was engaged.

As to the fourth consideration, it has not been shown to my satisfaction that the information provided by Vredelco's solicitors under cover of their letter dated 18 October 1993 was not taken into account. In any event, that information does not detract from the conclusion reached by

the Authority that normal values could not be determined under par.269TAC(2)(c).

It follows from what I have already said that the principal submission advanced by counsel for Vredelco is rejected. In particular, the submission that the decision that normal values could not be determined in accordance with par.269(2)(c) was so unreasonable that no reasonable person could have made it cannot be sustained.

It was also submitted on behalf of Vredelco that the normal values ascertained by the Minister were so unreasonable that no reasonable person could have arrived at the amounts so ascertained. It was contended that, as the Authority, and therefore the Minister, knew the cost of production of Vredelco's products and the cost of delivery and other charges that would necessarily have been incurred in the sale of those products in Singapore, the normal values ascertained by the Minister resulted in "profit levels for Vredelco of positively ludicrous proportions", levels far in excess of those applicable in the industry generally, and in Singapore in particular, and levels which no reasonable person could accept as realistic.

It was frankly conceded by counsel for Vredelco that this submission could only be sustained if the Authority is to be taken as having accepted the information provided by Vredelco as to the cost of manufacturing the subject goods and

the estimated selling and administration expenses in relation to selling the goods on the domestic market assuming such sales to have been made. However, having regard to the matters to which I have referred in considering the principal submission advanced on behalf of Vredelco, there is no proper basis upon which the Authority can be taken to have accepted that information. Further, the Authority, in determining the normal values under subs.269TAC(6), did not make a calculation in which an amount representing a rate of profit on assumed domestic sales was an integer. It determined those values by reference to evidence it regarded as indicating the prices at which the goods in question were sold on the domestic market in Singapore.

The submission is rejected.

A further submission was made on behalf of Vredelco based on the provisions of s.269TP of the Customs Act, that section providing:

> "A notice under subsection 269TG(2), 269TH(2), 269TJ(2) or 269TK(2) in respect of a kind of goods, may, without limiting the generality of those provisions, be expressed to apply to:
>
> (a) goods of that kind exported from a particular country; or
>
> (b) goods of that kind exported by a particular exporter."

It was submitted that the Minister, in expressing the notice under subs.269TG(2) to apply to goods of the specified kind

exported from Singapore rather than expressing the notice to apply to goods of that kind exported by a particular exporter, had failed to take into account the possibility that Vredelco had a different cost structure to that of other exporters of those goods from Singapore and, in particular, different from that of Sime Darby. In the alternative, it was submitted that, on the material before the Authority and the Minister, the only proper conclusion that could have been reached was that different normal values should be fixed for Vredelco and Sime Darby, thus rendering unlawful the decision to apply the normal values ascertained by the Authority and adopted by the Minister to all exporters from Singapore of the subject goods.

Section 269TP does not expressly identify the circumstances in which the Minister, in issuing a notice under s.269TG(2), may properly adopt one or other of the forms authorised by the provision. The section, therefore, must be taken to confer a wide discretion, the factors which may be taken into account being unconfined except in so far as there may be found in the subject-matter, scope and purpose of the statutory provisions some implied limitation on the factors to which the Minister may legitimately have regard: *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24 at p.40. Section 269TP may be thought to reflect Art.8(2) of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade which provides:

> "2. When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in

> the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources, from which price undertakings under the terms of this Code have been accepted, The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved."

But whether or not the provisions of that Article are to be seen as limiting the width of the discretion implicit in the provisions of s.269TP, there is nothing in the material before the Court to sustain the proposition that, in issuing the notice under subs.269TG(2) in this case, the exercise of the discretion miscarried. The assertion on behalf of Vredelco that the cost structures of that company may have been different from those of Sime Darby, Vredelco having put forward no material to support the existence of any relevant difference, provides no basis for concluding that the Minister erred in expressing the notice to apply to goods of the relevant kind exported from Singapore.

Material Injury

The application under s.269TB of the Customs Act claimed that imports of edible vegetable oil from Singapore were causing, and threatening to cause, material injury through price undercutting, price depression, price suppression and reduced profitability. The Australian Oilseeds Federation Incorporated claimed that the Australian

industry had been forced to lower its prices of branded and generic oils to compete, and maintain its market position, against the price undercutting of the dumped imports. In Report No.113, the Authority explained that it regarded price undercutting as occurring when a company sells goods at a price below that achieved by competitors; price depression as occurring when an industry, for some reason, lowers its prices; and price suppression as occurring when the margin between the industry's costs and prices is reduced.

As a result of its examination of the economic condition of the Australian industry and recent trends therein, the Authority expressed its conclusions as follows:

> ". the local industry has lost market share for branded oils, but still retained some 92 per cent of the Australian market for edible vegetable oils;
>
> . the Authority found evidence of some price undercutting, mainly confined to a small segment of the market;
>
> . the local industry has experienced some price depression, particularly on generics;
>
> . the local industry has experienced price suppression on most of its edible vegetable oil products; and
>
> . the industry has experienced increased losses and low profitability."

The Authority was satisfied that the Australian industry producing edible vegetable oils in containers up to 6 litres had suffered material injury.

The Authority then considered whether the material injury to the Australian industry was caused by the importation into Australia from Singapore of the subject goods at dumped prices. It answered that question in the affirmative, the expression of that conclusion being preceded by the following:

> "The local industry, in its application to Customs and in submissions to the Authority, has claimed that it had to reduce its prices in order to avoid losing market share.
>
> The Authority notes that the price depression found in its material injury analysis, particularly on generic products, is consistent with this claim. The Authority has also sighted correspondence between Meadow Lea and two of its major customers which demonstrates that in 1992 and 1993 Meadow Lea cut its prices in an effort to maintain its sales to those customers.
>
> The Authority also notes that the local industry has invested in new plant and equipment over recent years at its vegetable oil plants around Australia. This investment has led to increased efficiencies and reduced operating costs. The reduced operating costs could have contributed, in part, to the industry's reduced prices. However, the Authority notes that the local industry's prices for edible vegetable oils have tended to fall at a faster rate than its costs.
>
> The Authority has found that dumped imports represent only a small share of the vegetable oil market - about seven per cent. On the face of it, it would seem unlikely that such a small share could cause material injury to the local industry. Nevertheless, the Authority has evidence that quotations by exporters have been used to influence the prices subsequently offered by the local industry. In the light of this, the Authority is satisfied that the presence and availability of dumped imports have exerted downward pressure on prices in the Australian market."

The Authority then explored the question whether dumping posed a threat of continuing material injury to the Australian industry and concluded that it did.

Vredelco does not contend that the Authority erred in law in setting out the test to be applied in determining whether there was material injury to the relevant Australian industry because of the export of the subject goods to Australia from Singapore at dumped prices. It was, however, submitted that the material to support the Authority's conclusions was such that no reasonable person could have reached the conclusion that dumping had caused material injury to the Australian industry. It was asserted that the evidence of material injury to the Australian industry was, on the Authority's own findings, slender. The Authority's assessment of market shares was said to have resulted in a finding that there was a rising market share for imported oil which was offset by a rising market share for Australian-produced generic oils. Reliance was also placed on the Authority's findings -

- that there was "some evidence" of price undercutting but that this was confined to a small part of the market;
- that there was "no consistent trend" in relation to price depression; and
- that, overall, the Australian industry's profitability was very low.

It was also submitted that the evidence relied upon to support the conclusion that the material injury to the Australian industry had been caused by the dumping was confined to correspondence between Meadow Lea and two of its major customers which, the Authority said (see the passage

quoted above), demonstrated that in 1992 and 1993 Meadow Lea cut its prices in an effort to maintain its sales to those customers. The assertion was made that there was nothing before the Court to show that the Authority had verified that the requests from the two customers to lower prices were genuinely based on quotes from overseas sources and that that material, therefore, did not support the conclusion to which the Authority came. It was submitted that the decision that the dumping had caused material injury to the Australian industry was, thus, a decision to which no reasonable person could have come.

In my opinion, there was material before the Authority on which it was entitled to rely which tended to support the conclusion to which it came. The weight to be given to that material was a matter for the Authority, and in turn the Minister, to consider. Notwithstanding the criticism of that material that has been advanced on behalf of Vredelco, I am unable to conclude that it was so insubstantial that a decision based upon it should be set aside as manifestly unreasonable (*Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24 per Mason J. at pp.40-2) or as an abuse of power (*Attorney-General (NSW) v Quin* (1990) 170 CLR 1 per Brennan J. at p.36).

It was further submitted that the Authority had failed to take into account a relevant consideration, namely the effect on the industry of the recession during the period

under review. The substance of the submission was that, although Vredelco had placed no material before the Authority bearing upon the effect of the recession on the Australian industry, the Authority was required to make inquiries into that aspect of the matter because the recession may have explained, so it was submitted, every indication of material injury found by the Authority.

I have read and considered the whole of the material that was placed before the Court. I am, however, unable to discover any cogent evidence to support the contention that the economic recession had any substantial adverse impact on the relevant Australian industry. The only document relied upon by Vredelco in this regard does not support its contention. Indeed, the Authority, as a result of its analysis of market supplies, found that, far from the Australian market for edible vegetable oils declining in the relevant period (a decline which, had it occurred, may have been attributable, in whole or in part, to the economic recession), that market had in fact grown "from 25,500 tonnes in 1988-89 to 30,400 tonnes in 1992-93, representing an annual average increase of around four per cent".

In *Enichem Anic Srl v Anti-Dumping Authority* (1992) 39 FCR 458, Hill J. (with whose judgment Gummow and O'Connor JJ. agreed) said, at p.469:

> "Decision-making is a function of the real world. A decision-maker is not bound to investigate each avenue that may be suggested to him by a party interested. Ultimately, a decision-maker must do the best on the material available after giving interested parties the right to be heard on the question."

The position is *a fortiori* where the matter sought to be relied upon in the course of judicial review was not raised as an issue before the decision-maker. As Wilcox J. said in *Prasad v Minister for Immigration and Ethnic Affairs* (1985) 6 FCR 155 at pp.169-170:

> "The circumstances under which a decision will be invalid for failure to inquire are, I think, strictly limited. It is no part of the duty of the decision-maker to make the applicant's case for him."

See also *J Wattie Canneries Ltd v Comptroller-General of Customs* (1987) 16 FCR 136 at p.150-1.

Contrary to the submission of counsel for Vredelco, there is nothing in the judgment of this Court in *ICI Australia Operations Pty Ltd v Fraser* (1992) 34 FLR 564 which supports the contention advanced on behalf of Vredelco that the Authority and the Minister were, in the circumstances of this case, bound to inquire into the possible effects of the economic recession on the relevant Australian industry.

Conclusion

For the reasons set out above, the application is dismissed. The applicant must pay the respondents' costs of and incidental to the application.

I certify that this and the preceding 41 pages are a true copy of the Reasons for Judgment herein of the Honourable Justice Neaves.

Associate

Dated: 22 November 1994

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Solicitors for the applicant	:	Clayton Utz
Counsel for the first and second respondents	:	Mr S.J.Gageler
Solicitor for the first and second respondents	:	Australian Government Solicitor
Counsel for the third respondent	:	Mr P.P. Strasser
Solicitors for the third respondent	:	Landerer & Company
Dates of hearing	:	10 and 11 October 1994
Date of judgment	:	22 November 1994