



Australian Government
**Australian Customs and
Border Protection Service**

R E P O R T

CUSTOMS ACT 1901 - PART XVB

TRADE MEASURES REPORT No. 149

**PROCESSED DRIED CURRANTS
FROM
GREECE**

REINVESTIGATION OF CERTAIN MATTERS

30 SEPTEMBER 2009

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1 ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
the Act	<i>Customs Act 1901</i>
ADFA	Australian Dried Fruit Association Inc.
Anti-dumping Agreement	Agreement on implementation of Article VI of the <i>General Agreement on Tariffs and Trade 1994</i>
CEO	Chief Executive Officer of Customs and Border Protection
Clyne	Clyne Foods Pty Ltd
CTMS	cost to make and sell
currants	processed dried currants
Customs and Border Protection	Australian Customs and Border Protection Service
Dumping Duty Act	<i>Customs Tariff (Anti Dumping) Act 1975</i>
FIS	free into store
Frutex	Frutex Australia Pty Ltd
injury analysis period	period commencing 1 July 2003
investigation period	1 April 2007 to 31 March 2008
Minister	Minister for Home Affairs
public record	the public record maintained under section 269ZJ of the Act
RMCG	Rendell McGuckian Consulting Group
ROI	return on investment
SEF	statement of essential facts
SRM	Scholefield Robinson Mildura
Sunbeam	Sunbeam Foods Pty Ltd
Sunraysia	Sunraysia Dried Fruits Pty Ltd
the 2005 Report	<i>Dried Fruit Industry Benchmarking Final Report 2002/03 and 2003/04</i> , RMCG and Scholefield Robinson Mildura (2005)
the 2007 Report	<i>Sustainability of Dried Grape Production</i> , Scholefield Robinson Mildura (2007)
the 2008 Cost Update Report	2008 Australian Currants - Cost of Production in the 2007/08 Season, Scholefield Robinson Mildura (2008)
Trade Measures Report 140	Report 140
Trade Measures Review	Trade Measures Review Officer

Officer	
WTO	World Trade Organisation

2 Summary

This report provides the results of the Australian Customs and Border Protection Service's (Customs and Border Protection) reinvestigation of certain findings contained in Trade Measures Report 140 (Report 140), which related to an investigation into dumping of certain processed dried currants (currants) exported to Australia from Greece.

2.1 Recommendation

Customs and Border Protection recommends that the Minister for Home Affairs (Minister) affirm his decision to publish dumping duty notices in respect of currants exported to Australia from Greece.

If the Minister accepts this recommendation, to give effect to that decision the Minister must sign the attached notice at Appendix 1.

2.2 Application of law to facts

Division 9 of Part XVB of the Customs Act 1901 (the Act¹) sets out procedures for review by the Trade Measures Review Officer (TMRO) of certain decisions made by the Minister or Chief Executive Officer of Customs and Border Protection (CEO).

2.2.1 The role of Customs and Border Protection in a reinvestigation

Customs and Border Protection is required to conduct a reinvestigation of a finding or findings where the Minister has accepted a recommendation by the TMRO that a finding or findings should be reinvestigated.

Customs and Border Protection is required to give the Minister a report of the reinvestigation affirming the finding or findings or setting out any new finding or findings, the evidence or other material on which the new finding or findings are based and the reasons for that decision.

2.2.2 The role of the Minister in a reinvestigation

In relation to the report of a reinvestigation, the Division empowers the Minister, after receiving the report, to:

- affirm the reviewable decision concerned; or
- revoke that decision and substitute a new decision.

Depending on the Minister's decision² it may be necessary for the Minister to:

¹ A reference to a division, section or subsection in this report is a reference to a provision of the Act, unless otherwise specified.

² Under subsection 269ZZM(3).

- publish a dumping duty notice or countervailing duty notice; or
- vary a dumping duty notice or countervailing duty notice; or
- revoke a dumping duty notice or countervailing duty notice and substitute another dumping or countervailing duty notice.

2.2.3 The reviewable decision

In the original investigation, Customs and Border Protection was satisfied that:

- currants exported from Greece to Australia at dumped prices have caused material injury to Australian producers of currants;
- currants exported from Greece to Australia at dumped prices have caused material injury to Australian dried currant growers; and
- currants exported from Greece to Australia at dumped prices has caused material injury to the Australian industry, comprising both the producers of currants and the dried currant growers

and recommended that the Minister publish dumping duty notices³ in respect of dried currants exported to Australia from Greece.

The relevant Minister's decision to publish dumping duty notices is the reviewable decision.

2.2.4 What must be reinvestigated

The Minister directed Customs and Border Protection to reinvestigate certain findings in Report 140 and report the results of the reinvestigation to him on or before 30 September 2009. These were the findings that:

- the dumped exports from Greece caused material injury to the Australian producers of currants in the form of:
 - price depression in the industrial market segment;
 - price suppression in the industrial market and overall;
 - losses in the industrial market segment;
 - unprofitable rates of return in the industrial market segment;
 - lower profits overall than would have been achieved in the absence of dumped imports from Greece; and
 - lower profitability overall than would have been achieved in the absence of dumped imports from Greece;
- the dumped exports from Greece caused material injury to Australian dried currant growers in the form of:
 - price depression;

³ Under s. 269TG(1) and (2).

- price suppression;
- loss of sales volumes; and
- unprofitable rates of return;
- dumped exports from Greece caused material injury to the Australian Industry in the form of:
 - reduced return on investment for dried currant growers; and
 - reduced attractiveness for re-investment for dried currant growers.

The particular findings to be reinvestigated formed part of the basis for Customs and Border Protection's conclusion in the original investigation that there were reasonable grounds to be satisfied that dumped exports of the goods caused material injury to the Australian industry producing like goods; and its recommendation to the Minister that he publish dumping duty notices.

2.2.5 Findings and recommendation of the reinvestigation

The reinvestigation has considered all relevant information and concluded that there are reasonable grounds to affirm the findings required to be reinvestigated and affirms those findings.

In effect, Customs and Border Protection still considers that there were reasonable grounds for the Minister to:

- conclude that:
 - dumped exports from Greece caused material injury to the Australian producers of currants;
 - dumped exports from Greece caused material injury to the Australian growers of dried currants;
 - dumped exports from Greece caused material injury to the Australian industry; and
- decide to publish dumping duty notices.

Customs and Border Protection therefore recommends that the Minister affirm the reviewable decision.

Details of the reinvestigation and Customs and Border Protection's reasons for affirming the findings in respect of the currant producers are set out in Chapter 4 of this report.

Details of the reinvestigation and Customs and Border Protection's reasons for affirming the findings in respect of the dried currant growers and the Australian industry as a whole are set out in Chapter 5 of this report.

3 Background

3.1 Original Investigation

On 28 April 2008, following an application by Sunbeam, Customs and Border Protection initiated an investigation into the alleged dumping of currants exported to Australia from Greece. The investigation was announced by notice in *The Australian* newspaper. Australian Customs Dumping Notice (ACDN) 2008/15 was also issued on the same day.

The goods the subject of the application are processed dried currants of the grape variety *Vitis Vinifera L. Black Corinth*. Sultanas, muscat raisins, unprocessed currants or blended dried fruit mixtures were excluded from the investigation.

The goods are classified to tariff subheading 0806.20.00, statistical code 29 in Schedule 3 of the *Customs Tariff Act 1995*. The applicable rate of duty for the goods exported from Greece is 5%.

On 17 November 2008, Customs and Border Protection made a preliminary affirmative determination that there appeared to be sufficient grounds for the publication of a dumping duty notice. Provisional measures in the form of securities were applied to imports of currants exported to Australia from Greece that were entered for home consumption on or after 17 November 2008.

On 6 January 2009, the Minister accepted the recommendations contained in Report 140 including the reasons for the recommendations, the material findings of fact on which the recommendations were based and the evidence relied on to support those findings.

The considerations relevant to the determination of material injury to the Australian industry included the size of the dumping margins, the quantity of goods exported from the country under investigation, the effect of dumped imports on prices in the Australian market in the form of price depression and price suppression and the consequent impact on the Australian industry including losses of sales volume, unprofitable rates of return, losses and lower profits and profitability. The reduced return on investment for dried currant growers and reduced attractiveness for re-investment for dried currant growers was also considered in the determination of material injury to the Australian industry.

To give effect to the acceptance of the recommendations, the Minister published dumping duty notices under subsections 269TG(1) and (2) imposing anti-dumping measures on currants exported to Australia from Greece.

3.2 Review of a Ministerial decision by the Trade Measures Review Officer

Division 9 of Part XVB of the Act provides for reviews by the TMRO of certain decisions by the Minister, including decisions to publish a dumping duty notice

under subsections 269TG(1) or 269TG(2). Reviews are conducted only on applications from relevant interested parties⁴.

The TMRO received one application for review. The applicant, Frutex Australia Pty Ltd (Frutex), is an interested party within the meaning of the Act. On 27 March 2009, the TMRO published a notice⁵ in *The Australian* notifying that a review of the Ministerial decision in relation to currants exported to Australia from Greece would be undertaken and the report to the Minister would be made in May 2009.

The TMRO received submissions from Sunbeam and Frutex.

The information and conclusions in the application and submissions to a review must be based only on the relevant information. In making his recommendation to the Minister, the TMRO is only to have regard to “relevant information” (as defined⁶). In short, the TMRO must only have regard to the information available to Customs and Border Protection during the course of its investigation, contained in Report 140, the application for review and submissions to the review⁷.

3.2.1 Findings to be reviewed

Following the review, the TMRO, recommended that the Minister direct the Chief Executive Officer of Customs and Border Protection to reinvestigate the following findings:

- a) that the dumped exports from Greece caused material injury to the Australian producers of currants in the form of:
 - price depression in the industrial market segment;
 - price suppression in the industrial market and overall;
 - losses in the industrial market segment;
 - unprofitable rates of return in the industrial market segment;
 - lower profits overall than would have been achieved in the absence of dumped imports from Greece; and
 - lower profitability overall than would have been achieved in the absence of dumped imports from Greece;
- b) that the dumped exports from Greece caused material injury to Australian dried currant growers in the form of:
 - price depression;

⁴ As defined in section 269ZX

⁵ Pursuant to section 269ZZI.

⁶ In accordance with section 269ZZK(6).

⁷ In accordance with section 269ZZK(4).

- price suppression;
 - loss of sales volumes; and
 - unprofitable rates of return;
- c) that dumped exports from Greece caused material injury to the Australian Industry in the form of:
- reduced return on investment for dried currant growers; and
 - reduced attractiveness for re-investment for dried currant growers.

On 27 May 2009, the Minister accepted the TMRO's recommendations and directed Customs and Border Protection to reinvestigate the above findings. The Minister further directed that Customs and Border Protection provide the reinvestigation report to him on or before 30 September 2009.

3.2.2 Notice of reinvestigation

On 10 June 2009, a notice⁸ was published in *The Australian* advising the Minister's acceptance of the review findings and the reinvestigation requirements.

3.3 Reinvestigation by Customs and Border Protection

Customs and Border Protection published ACDNs 2009/19 and 2009/23 notifying details of the reinvestigation procedures. The ACDNs advised that:

- the reinvestigation is subject to section 269ZZL and could only have regard to the information and conclusions to which the TMRO was permitted to have regard;
- no new information or conclusions may be considered in a reinvestigation;
- all relevant information is in the public domain and is available to interested parties through the public record of the investigations or the public record of the review maintained by the TMRO; and
- the report of the reinvestigation must be provided to the Minister on or before 30 September 2009.

3.3.1 Submissions received in relation to the reinvestigation

Customs and Border Protection received submissions from Sunbeam and Frutex. No information or conclusions contained in these submissions were considered by the reinvestigation team.

⁸ In accordance with section 269ZZL.

3.4 The Minister's role

The reviewable decision in this instance is the Minister's decision to publish dumping duty notices⁹ in respect of currants exported to Australia from Greece. In relation to the report of the reinvestigation, the Minister must¹⁰:

- affirm the reviewable decision concerned; or
- revoke that decision and substitute a new decision.

3.5 The reinvestigation report

The following sections of this report sets out Customs and Border Protection's:

- reinvestigation of the findings required to be reinvestigated;
- conclusions on whether the original findings should be affirmed or new findings made;
- sets out the evidence or other material on which the findings are based; and
- sets out the reasons for Customs and Border Protection's recommendation to the Minister in relation to the reviewable decision.

⁹ Under subsections 269TG(1) and (2)

¹⁰ Under s. 269ZZM(1)

4 Material injury to Australian producers of currants

The Minister has directed Customs and Border Protection to reinvestigate the finding that dumped exports from Greece caused material injury to the Australian producers of currants in the form of:

- price depression in the industrial market segment;
- price suppression in the industrial market and overall;
- losses in the industrial market segment;
- unprofitable rates of return in the industrial market segment;
- lower profits overall than would have been achieved in the absence of dumped imports from Greece; and
- lower profitability overall than would have been achieved in the absence of dumped imports from Greece.

4.1 Summary of reinvestigation findings

The reinvestigation has considered all relevant information and concluded that there are reasonable grounds to affirm the findings in the original investigation that the dumped exports from Greece caused material injury to the Australian producers of currants in the form of:

- price depression in the industrial market segment;
- price suppression in the industrial market and overall;
- losses in the industrial market segment;
- unprofitable rates of return in the industrial market segment;
- lower profits overall than would have been achieved in the absence of dumped imports from Greece; and
- lower profitability overall than would have been achieved in the absence of dumped imports from Greece.

The reinvestigation affirms those findings for the following reasons.

4.2 Original investigation

In making an assessment of the injury to the producers of currants in the original investigation Customs and Border Protection took into account all available information including that:

- contained in the application from Sunbeam;
- received in submissions in response to the publication of the initiation notice;
- obtained during visits to both Sunbeam, Australian Dried Fruit Association Inc. (ADFA) and Sunraysia and importers of currants;
- obtained from Customs and Border Protection commercial data base;
- contained in the statement of essential facts (SEF); and
- in submissions to the SEF.

4.2.1 The Australian industry

In the original investigation Customs and Border Protection considered that currants were close processed agricultural goods.¹¹ Consequently the Australian industry was deemed to include both the growers (of dried currants) and producers (of currants) and injury analysis and causation was examined separately for both producers and growers and the Australian industry as a whole.

4.2.2 Dumping

In the original investigation Customs and Border Protection found that all exports of currants from Greece were at dumped prices:

- with margins of greater than 30 percent; and
- more than half the exports were at margins greater than 80 percent.

In the original investigation Customs and Border Protection also found that in the investigation period, the volume of dumped currants exported to Australia from Greece represented:

- over 90 percent of total imports by volume from all sources; and
- approximately 50 percent of the total Australian market.

4.2.3 Price effects

In the original investigation Customs and Border Protection found that imports of currants from Greece were predominantly sold into the industrial segment of the Australian market and although there are a number of factors relevant to the decision to purchase currants, price remained a very important consideration. Customs and Border Protection also found that currants from Greece were consistently the benchmark for the lowest prices in the Australian market.

Customs and Border Protection found that imported currants from Greece undercut the Sunbeam selling price by a weighted average margin of seven percent in the industrial segment. It also found that price undercutting had occurred in the industrial market segment during the investigation period.

In the original investigation Customs and Border Protection noted that the decision by the Australian producers of currants, particularly Sunbeam, to reduce the price paid to Australian dried currant growers followed a spike in the volume of currants exported from Greece in 2004/05. Sunbeam's decision to reduce sales prices in the industrial market segment also followed that spike in import volumes. In the original investigation Customs and Border Protection found the decision to reduce sales prices caused price depression.

Customs and Border Protection found that over the period 2004/05 to 2005/06 Sunbeam experienced price suppression in relation to overall sales and that

¹¹ Subsection 269T(4B).

the price suppression evident in overall sales was due to the degree of price suppression experienced in the industrial market segment over this period. Customs and Border Protection established that Sunbeam selling prices to the industrial segment were suppressed throughout the period 2004/05 to 2007/08.

The price suppression evident in the industrial segment was considered particularly significant as this was the segment where the majority of dumped imports were sold, whereas the retail segment, the segment largely unaffected by the dumped imports, did not suffer from price suppression.

In the original investigation Customs and Border Protection found that price increases, which otherwise would have occurred, had been prevented in relation to overall sales of currants.

Customs and Border Protection found that dumping had caused price depression and price suppression in relation to the sales in the industrial market segment by the Australian producers of currants.

4.2.4 Sales volume and market share

In considering the Australian industry claims of lost sales volumes and reduced market share in the original investigation, Customs and Border Protection examined the sales volumes of Australian producers of currants. This sales information included Sunbeam's verified sales data, Sunraysia's sales data and an estimate of the Australian producer, Clyne Foods Pty Ltd's (Clyne), sales volumes for the period 2004/05 to 2007/08.

In the original investigation Customs and Border Protection found that despite a declining market, Australian producers of currants had experienced increased sales volumes in both the industrial segment and in overall total sales. It also identified a decline in the retail sales by those producers in the same period.

Customs and Border Protection noted an increase in the market share held by the Australian producers of currants but confirmed that imports from Greece had maintained a market share of over 47 percent in the period.

In the original investigation Customs and Border Protection found that the Australian producers of currants had not suffered material injury in the form of lost sales volume or loss of market share.

4.2.5 Profit and profitability

The profit and profitability charts for Sunbeam at section 8.3.4 of Report 140 cover the period 2004/05 to 2007/08. Sunbeam's profit overall improved from a loss making position in 2004/05 and 2005/06. Despite this improvement, all Sunbeam sales in the industrial segment over 2004/05 to 2007/08 were at a loss.

In the original investigation Customs and Border Protection considered that the overall improvement in profit had been driven by an improvement in the profit earned from the sale of currants in the retail market segment and a decline in the losses incurred from sales of currants in the industrial market segment.

Customs and Border Protection considered this improving performance by the Australian industry in the retail segment was an indicator of the potential performance of the industry in a market segment unaffected by dumped imports.

In the original investigation Customs and Border Protection found that “currants exported to Australia from Greece at dumped prices have caused price depression and suppression for the Australian producers of currants, and these price effects have resulted in losses and unprofitable returns in the industrial market segment.”¹²

Conclusions on increased profitability in the retail segment, and overall, were made on the same basis (ie. “Sunbeam incurred continuing losses in sales of currants in a market segment allegedly affected by dumped Greek imports, namely, the industrial segment. Whereas, Sunbeam continued to earn increasing profitability from sales of currants in a market segment unaffected by allegedly dumped imports.”)¹³

In considering the performance of the Australian producers, in the original investigation Customs and Border Protection found that overall profits and profitability would have been greater in the absence of dumping.

4.3 Application for review and submissions to the Review Officer

The Frutex application to the TMRO argued that there “was no or insufficient evidence before Customs to enable it to arrive at the conclusions it made”¹⁴ on material injury to both producers and growers in the Australian industry.

Frutex claimed that the findings presented in Report 140 on a total like goods basis, were not indicative of material injury to the Australian producers. Specifically, the findings of overall increases in sales volume, profit, profitability and sales value did not indicate Australian producers had suffered material injury.

Frutex contended that while Customs and Border Protection found there was price undercutting in the industrial market segment, it had erred in not analysing the effects of this indicator in its assessment of injury by examining selling prices in the retail segment.

¹² Report 140, p67

¹³ Report 140, p67

¹⁴ Frutex application to TMRO, p15 (paragraph 37)

Frutex questioned the finding of price depression in the industrial market segment only, and emphasised that Australian producers suffered no price depression in either the retail market segment or in sales overall.

Frutex also argued that the observation that price suppression on overall sales that had occurred in 2004/05 and 2005/06 did not reflect the improvement in the position of the Australian producers over the injury analysis period. Frutex also noted that the period where price suppression was demonstrated to the growers also mirrored the period where no cost information was available from growers.

Frutex submitted that on a total like goods basis, the information in Report 140 suggested that the Australian producers had not suffered material injury.

4.4 TMRO report

The TMRO reiterated the claim by Frutex, that “.....there was no or insufficient evidence upon which Customs could find there was material injury to the Australian industry”¹⁵. The TMRO also noted contentions by Frutex “...that Customs findings that Australian producers had: increased sales volumes in a declining market; increased market share; and increased profit and profitability, indicate that the industry has not suffered material injury”¹⁶. While it is not clear that the TMRO adopted Frutex’s positions, in view of his recommendation, Customs and Border Protection has assumed that this is the case.

The TMRO also considered that an assessment of material injury could not be made without an evaluation of the whole Australian industry producing like goods. It was the TMRO’s view that the assessment should have included Clyne, a new producer, operating in the injury analysis period but not visited by Customs and Border Protection. The TMRO cited Clyne’s website in particular “that Clyne Foods holds around 30% of Australia’s domestic market and 25% of the export market”¹⁷.

The TMRO referred to the coercive powers available under s.214B to require certain parties to produce accounts and manufacturing records to Customs and Border Protection. The TMRO clearly considered that if Customs and Border Protection had used these coercive powers to obtain information from Clyne, then “it may have led to the conclusion that Sunbeam is being injured, if at all, not by dumping but by the entry of a new competitor into the dried fruit market”¹⁸ (emphasis added).

The TMRO also referred to other factors that he considered may have been more directly causative of injury, such as the prolonged drought in the currant

¹⁵ TMRO report, p2 (paragraph 7)

¹⁶ TMRO report, p2 (paragraph 8)

¹⁷ TMRO report, p3 (paragraph 14)

¹⁸ TMRO report, p3 (paragraph 14)

producing areas, increased domestic competition and a world oversupply of currants in the period under review.

4.5 The reinvestigation

In reinvestigating injury to the Australian producers and a possible causal link, between the dumped exports and any injury, the following was considered:

- information contained in the application for anti-dumping measures and verified during visits to the Australian industry;
- information on the Customs and Border Protection commercial data base;
- submissions received in response to the publication of the initiation notice;
- information gathered and verified during visits to interested parties, including views expressed in visit reports;
- the SEF;
- submissions in response to the SEF;
- Report 140;
- the application and submissions to the TMRO as far as they related to the relevant information or conclusions based on the relevant information; and
- the TMRO's report.

4.5.1 Dumping

The reinvestigation confirmed that all exports of currants from Greece:

- were at dumped prices with margins of greater than 30 percent;
- were at dumped prices with more than half the exports at margins greater than 80 percent;
- represented over 90 percent of total imports by volume from all sources; and
- accounted for approximately 50 percent of the total Australian market volume.

4.5.2 Material injury caused by dumping

The reinvestigation noted that both the Australian industry and importers sold currants to food brokers and/or traders, food services and industrial end-users within the industrial segment of the market.

The reinvestigation also noted that interested parties were in general agreement that currants from Greece were consistently the benchmark for the lowest prices in the Australian market.

4.5.2.1 Absence of information from all members of Australian industry

The TMRO stated that if information had been obtained from the industry member Clyne, “it may have led to the conclusion that Sunbeam is being injured, if at all, not by dumping but by the entry of a new competitor into the dried fruit market”¹⁹. (emphasis added)

The TMRO referred to the coercive powers of Customs and Border Protection under section 214B to require the production of accounts, books and other records. Customs and Border Protection notes that it is outside the scope of a reinvestigation to consider such matters, and this power cannot be used in the context of a reinvestigation.

Customs and Border Protection also notes that while the original investigation did not have access to, and therefore could not verify, all information in relation to the Australian industry that could possibly be made available, this is commonly the case. In practice, perfect information is the exception not the rule and the legislative framework clearly reflects this reality (e.g. in making provision for a representative sample of the Australian industry to make an application and for the sampling of exporters). The decision that has to be made in every case, is whether the information that is available is sufficiently representative to allow reasonable conclusions to be drawn on the injurious effect of dumped goods on the Australian industry as a whole.

The TMRO referred to Clyne holding “around 30% of Australia’s domestic market”²⁰ in support of his position. Notwithstanding that there is some doubt as to whether this information falls within the definition of “relevant information”, the reinvestigation notes that Clyne’s website states that they specialise in dried vine and tree fruits, including sultanas, currants, mixed fruit, apricots, prunes, peaches and pears. The 30% referred to by the TMRO covers the range of dried fruit products sold to the Australian market, is not indicative of Clyne’s share of the Australian currant market and is likely to mislead when assessing Clyne’s impact on the market.

In this regard the reinvestigation notes that in the original investigation the estimates provided to Customs and Border Protection by Sunbeam on Clyne’s share of Australian production and sales of Australian produced currants, were ten per cent and six per cent respectively for 2007/08. This represents a market share of less than 3% in that year. The reinvestigation also noted that no interested parties disputed these figures.

In view of the above circumstances, the reinvestigation considers that the most reliable information available in relation to Clyne’s share of the Australian production and sales for currants is that which was relied on in the original investigation.

¹⁹ TMRO report, p3 (paragraph 14)

²⁰ TMRO report, p3 (paragraph 14)

As well as Clyne and Sunbeam, Sunraysia is also a member of the Australian industry producing currants. Sunraysia had only recently commenced production of currants and limited production and sales data were available.

In all the circumstances, the reinvestigation considers that the best available information in relation to the performance of the Australian currant producers is that verified from Sunbeam and supplemented by Sunraysia, where applicable.

4.5.2.2 Entry of new competitor

In relation to the TMRO's observation that Sunbeam's injury may be being caused by the entry of a new Australian industry competitor (Clyne) into the dried fruit market, the reinvestigation team notes that in the original investigation Customs and Border Protection did consider competition from industry members as a potential alternative cause of injury to the Australian industry. The reinvestigation notes that, while Sunraysia was a new entrant to the currant production industry, Clyne had been in operation for several years.

In Report No. 140 Customs and Border Protection noted that the issue was not raised by interested parties and goes on to state that Customs and Border Protection did not observe intense price competition amongst members of the Australian industry. In the large supply contracts examined, the competition was found to be largely between the major Australian producer, Sunbeam, and Frutex, the importer of currants from Greece. This evidence does not seem to have been given any weight by the TMRO.

In this context, the reinvestigation again notes that interested parties were in general agreement that currants from Greece were consistently the benchmark for the lowest prices in the Australian market.

The Trade Measures Review Officer has speculated that the entry of a new competitor has caused the injury to the Australian industry. The reinvestigation considers that the available evidence does not support this position.

4.5.3 Price undercutting

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

The reinvestigation has examined the selling price information for both imported and domestic sales of currants during the investigation period. The selling price information included transaction by transaction data from Sunbeam and one importer, and monthly summary sales data from two other importers. That selling price information confirmed that imported currants from Greece competed predominantly against locally manufactured currants in the industrial market segment. The reinvestigation confirmed that the importer and Sunbeam selling price information in the industrial market segment was at the same level (i.e. free-into-store net).

The reinvestigation found that the weighted average selling price of imported currants had undercut by seven percent the Sunbeam weighted average selling price in the industrial market segment during the investigation period.

While Clyne declined to provide information to the investigation, there is positive evidence from end users that the primary source of price pressure was imported currants from Greece and not members of the Australian industry. This evidence does not seem to have been given any weight by the TMRO.

The reinvestigation is satisfied that price undercutting occurred in the industrial market segment.

As the majority of dumped imports was sold into the industrial market segment, the reinvestigation is satisfied that the price undercutting that has occurred in the industrial market caused injury to the Australian producers of currants.

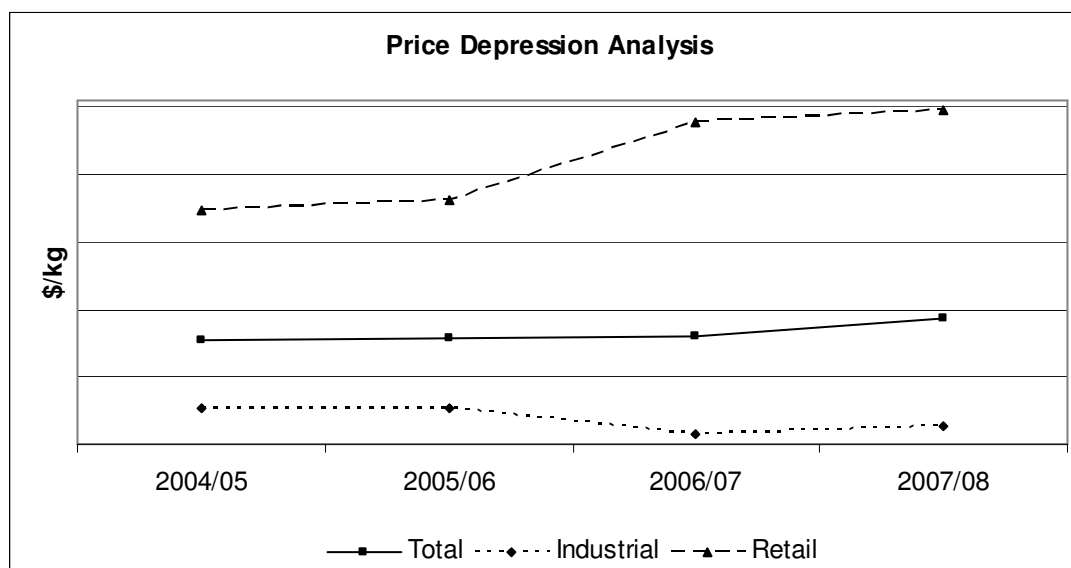
4.5.4 Price depression

Price depression occurs when there is a reduction in selling prices.

The reinvestigation examined evidence provided in support of the claim by the Australian industry that it was forced to reduce selling prices into the industrial market segment in response to the price undercutting by dumped exports from Greece. It was claimed that prices offered by importers of Greek currants were used as leverage by customers in negotiating lower prices with the Australian producers of currants. Evidence examined included published ABS data, unpublished pricing information for currants from Greece and market intelligence.

The reinvestigation found that Sunbeam had reduced its selling prices in the industrial market segment. The reinvestigation confirmed that Sunbeam's selling prices in the industrial market segment had declined overall by five per cent during the period 2004/05 to 2007/08 (i.e. the selling price declined in 2006/07 by seven per cent before increasing by two per cent in 2007/08).

The reinvestigation also examined Sunbeam's selling prices into the retail market segment where minimal sales of Greek currants occurred, and confirmed that these prices had risen over the injury analysis period. The movement of prices over the injury analysis period is detailed in the following chart.



The reinvestigation is satisfied that price depression has occurred in the industrial market segment and recognises that there are upward price movements in the retail market segment and overall.

Contrary to the submissions of Frutex and the position adopted by the TMRO, the reinvestigation does not consider it is appropriate to determine the existence of injury to the Australian producers of currants simply by aggregating prices in the different market segments. The dumping of currants from Greece caused injury to the Australian industry in the segment of the market in which they competed, which represented two-thirds of the Australian market. The reinvestigation considers it would not be appropriate to disregard this injury because of gains made in another segment where the dumped goods do not compete.

The reinvestigation regards the downward movement in prices in the industrial market segment is indicative of the injury to the currant producers caused by the dumping of currants from Greece.

4.5.5 Price suppression

Price suppression occurs when the margin between costs and prices is reduced, or when price increases (which otherwise would have occurred) have been prevented.

The reinvestigation examined the data available on the Australian industry's weighted average selling price and CTMS for all sales of currants over the period 2004/05 to 2007/08. All sales in the retail market were confirmed as profitable with margins steadily increasing over this period. With respect to overall sales it was also confirmed that prices were at increasing margins over CTMS since 2006/07. Prior to 2006/07 selling prices of overall sales were below CTMS. The reinvestigation also confirmed Sunbeam's selling prices were below CTMS in the industrial segment over the period 2004/05 to 2007/08.

The Frutex application to the TMRO states that the price suppression graphs in Report 140 show an increasing improvement in the position of the Australian producers over the four year period reviewed in respect of the like goods but the commentary concentrates on observing price suppression in 2004/05 and 2005/06.

The reinvestigation considered evidence from Sunbeam in relation to their pricing strategy in response to the dumped currants from Greece as described in Report 140²¹. The reinvestigation concluded that to compete with the dumped imports of Greek currants, the Australian producers of currants had lowered prices and not realised price increases which otherwise would have occurred. As a consequence the Australian producers of currants experienced price suppression in the industrial market segment.

In the original investigation Customs and Border Protection noted "that the absence of price depression and price suppression in the retail market segment serves as an important indicator of the possible performance in the industrial market segment in the absence of dumping"²². As noted above, the retail segment was a profitable segment. In addition, this was the segment largely unaffected by dumped Greek currants.

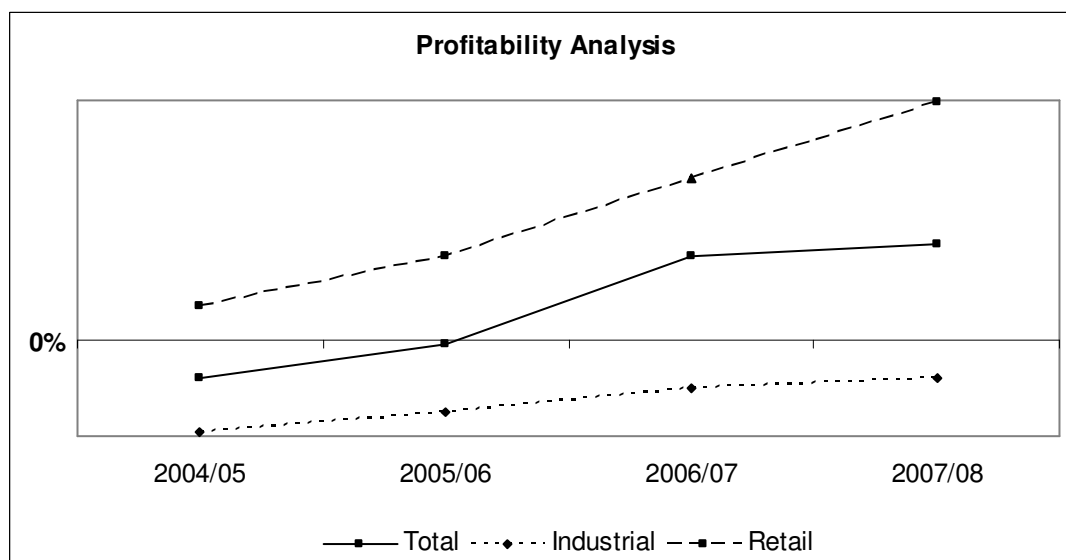
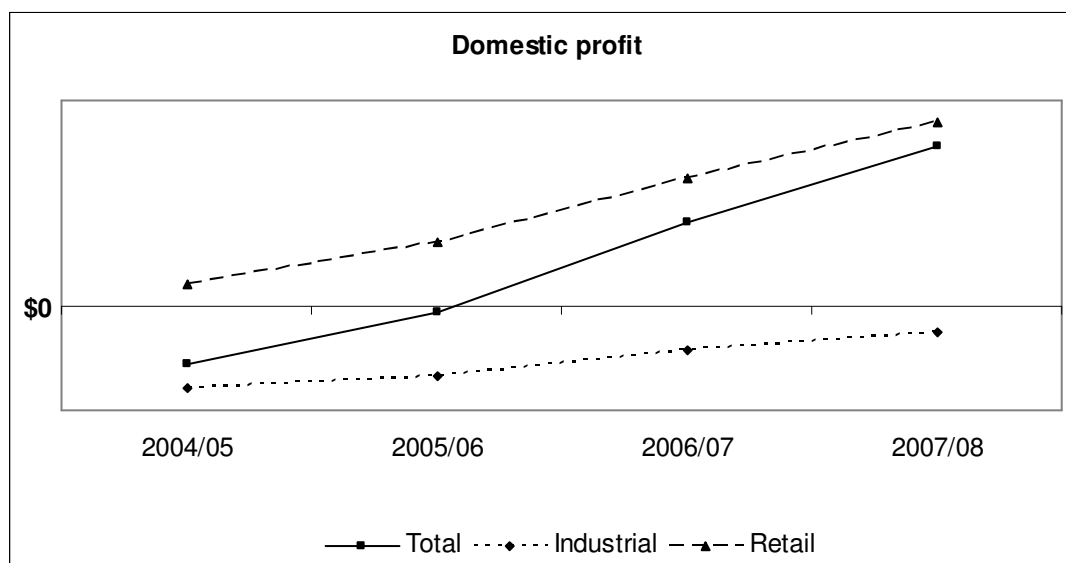
The reinvestigation considers that the dumped currants from Greece have suppressed market prices for currants in Australia in the industrial market segment. The reinvestigation also concludes that pressure from imports of currants from Greece at dumped prices over the investigation period prevented the Australian industry from achieving higher prices in the industrial market segment and overall.

4.5.6 Profits and profitability

The reinvestigation examined the financial data provided by Sunbeam in its consideration of profit and profitability over the injury analysis period. That examination confirmed the profit and profitability performance of Sunbeam in both market segments and overall, and is detailed in the following charts.

²¹ Report 140, p64

²² Report 140, p64



The reinvestigation noted the negative, but improving profit and profitability figures in the industrial market segment over the entire period. The reinvestigation also observed that in the retail segment, the segment largely unaffected by sales of currants from Greece, profit and profitability was at increasing margins.

The reinvestigation considers the increasing trend on margins of profit and profitability in the retail segment and overall, is indicative of the possible performance of the industrial segment in the absence of exports of currants from Greece at dumped prices.

The reinvestigation is satisfied that the Australian producers of currants have suffered injury through reduced rates of return in the industrial market segment. The reinvestigation is also satisfied that the evidence strongly suggests producer's profits and profitability overall were lower than would have been achieved in the absence of dumped currants from Greece.

The reinvestigation considers that the losses and unprofitable returns in the industrial market segment are indicative of injury to the currant producers caused by dumped imports from Greece.

4.6 Conclusion

Following examination of the information and evidence available the reinvestigation is satisfied that:

- price undercutting has occurred in the industrial market segment and the price undercutting represents injury to the Australian producers of currants. The dumped currants from Greece were consistently the benchmark for the lowest prices in the Australian market and resulted in the strategy by the major Australian producer to reduce prices to compete with the dumped imports;
- price depression has occurred in the industrial market segment. The reinvestigation regards the downward movement in prices in the industrial market segment as indicative of injury to the currant producers;
- the dumped currants from Greece have suppressed market prices for currants in Australia in the industrial market segment and overall;
- the Australian producers of currants have suffered injury through reduced rates of return in the industrial market segment. The reinvestigation is also satisfied that producer's profits and profitability overall were lower than would have been achieved in the absence of dumped currants from Greece. The reinvestigation considers that the losses and unprofitable returns in the industrial market segment are indicative of injury to the currant producers.

The reinvestigation again notes that:

- exports of currants to Australia from Greece in the investigation period were at dumped prices;
- the currants from Greece were dumped at margins of up to 80 percent;
- exports of currants from Greece over the injury analysis period have consistently held a market share of above 47 percent;
- dumped exports of currants from Greece were predominantly sold into the industrial market segment.

Taking account of the size of the dumping margin and price and profit factors, the reinvestigation team considers that the injury caused to the Australian producers of currants by the dumping is material.

The reinvestigation is reasonably satisfied that there is a causal connection between the imports of currants from Greece and the injury experienced by the Australian producers of currants as outlined above.

4.7 Customs and Border Protection decision in relation to findings in Report 140

The reinvestigation affirms the finding in Report 140 that dumped exports of currants from Greece have caused material injury to Australian producers of currants in the form of:

- price depression in the industrial market segment;
- price suppression in the industrial market and overall;
- losses in the industrial market segment;
- unprofitable rates of return in the industrial market segment;
- lower profits overall than would have been achieved in the absence of dumped imports from Greece; and
- lower profitability overall than would have been achieved in the absence of dumped imports from Greece.

5 Material Injury to Australian growers of dried currants and Australian industry

The Minister has directed Customs and Border Protection to reinvestigate the finding that dumped exports from Greece caused material injury to the Australian growers of dried currants in the form of:

- price depression;
- price suppression;
- loss of sales volume; and
- unprofitable rates of return.

The Minister has also directed Customs and Border Protection to reinvestigate the finding that dumped exports from Greece caused material injury to the Australian industry in the form of:

- reduced return on investment for dried currant growers; and
- reduced attractiveness for re-investment for dried currant growers.

5.1 Summary of reinvestigation findings

The reinvestigation has considered all relevant information and concluded that there are reasonable grounds to affirm the findings in the original investigation that the dumped exports from Greece caused material injury to the Australian growers of dried currants in the form of:

- price depression;
- price suppression;
- loss of sales volume; and
- unprofitable rates of return.

The reinvestigation has also considered all relevant information and concluded that there are reasonable grounds to affirm the findings in the original investigation that the dumped exports from Greece caused material injury to the Australian industry in the form of:

- reduced return on investment for dried currant growers; and
- reduced attractiveness for re-investment for dried currant growers.

The reinvestigation affirms the original findings that dumped exports from Greece have caused material injury to the Australian growers of dried currants and the Australian industry for the following reasons.

5.2 Original investigation

In making injury assessments in relation to the Australian growers of dried currants and the Australian industry, in the original investigation Customs and Border Protection took into account all available information including that:

- contained in the application from Sunbeam;

- received in submissions in response to the publication of the initiation notice;
- received from dried currant growers in response to questionnaires;
- obtained during visits to both Sunbeam, the ADFA and Sunraysia and importers of currants;
- obtained from Customs and Border Protection commercial data base;
- contained in the SEF; and
- put forward in submissions to the SEF.

5.2.1 Australian growers of dried currants

In the original investigation Customs and Border Protection identified ADFA as the peak industry body representing the interests of dried fruit growers, including the dried currant growers. As ADFA represented the interests of the majority of Australian dried currant growers, (who accounted for the majority of the production of dried currants in Australia) all information presented by ADFA was considered representative of dried currant growers generally.

5.2.2 The Australian industry

In the original investigation Customs and Border Protection considered that currants were close processed agricultural goods in accordance with subsection 269T(4B). Consequently the Australian industry was deemed to include both the growers (of dried currants) and producers (of currants) and injury analysis and causation was examined separately for both producers and growers, as well as the Australian industry as a whole

5.2.3 Price effects

In the original investigation Customs and Border Protection found that Sunbeam average prices paid to growers, based on their seasonal pricing and payments schedules, declined from \$1,783 per tonne in 2004/05, remaining stable at \$1,280 per tonne during the period 2005/06 to 2006/07 before increasing to \$1,545 in 2007/08

Customs and Border Protection found that while the weighted average price for 2007/08 had increased, it was still below the weighted average price for the 2004/05 harvest year. In the original investigation Customs and Border Protection considered that the decreasing price paid to dried currant growers by Sunbeam was a result of the decrease in sale price for processed dried currants into the industrial segment due to price undercutting by exports of processed dried currants from Greece. Customs and Border Protection found that growers had suffered price depression.

In the original investigation Customs and Border Protection found that over the period 2006/07 to 2007/08, total average costs were above the average selling price and there was a significant increase in costs in 2007/2008 in comparison to 2006/2007. The cost increase was attributed largely to the increase in costs for temporary water supplies purchased by dried currant

growers. Price suppression analysis did not extend to the 2004/05 and 2005/06 period as cost information could not be verified.

Customs and Border Protection found that dumped processed dried currants from Greece resulted in price undercutting and price pressure which contributed to preventing the Australian industry from achieving higher prices than otherwise would have been achieved during the investigation period. The price depression and price suppression experienced by producers in the industrial market segment resulted in a decrease in the price paid by producers to growers during a period of increases in the cost to make and sell (CTMS) dried currants.

In the original investigation Customs and Border Protection found that dumping had caused price suppression and price depression to growers of dried currants.

5.2.4 Loss of sales volumes

In the original investigation, Customs and Border Protection found that over the period 2004/05 to 2007/08, the production volume of dried currants had declined continually since the 2005/06 harvest year. The analysis was based on information from ADFA which contained the gate receipts for Sunbeam, Sunraysia and Clyne.

Customs and Border Protection found that the reduction in production volume occurred in 'significant part' due to the low price offered to growers from the producers and rising costs experienced by growers (including temporary water supply). It noted that the fall in production after 2005/06 followed the marked reduction in price paid for dried currants in that year.

In the original investigation, Customs and Border Protection found that decreases in the price paid to dried currants growers was a significant factor in some growers deciding to reduce production of dried currants. The decreases in the price paid to dried currants growers was considered suppressed due to the dumped imports of processed dried currants from Greece.

In the original investigation Customs and Border Protection found that dumping had caused a reduction in sales volumes of dried currants.

5.2.5 Unprofitable rates of returns

In the original investigation, Customs and Border Protection found that price suppression and price depression occurred to the Australian Industry as a result of dumped imports of currants from Greece and that these price effects resulted in unprofitable rates of return for growers. The price effects, in combination with the reduction in production volumes, caused losses to the growers.

Profitability for growers was not established for periods 2004/05 and 2005/06 period as the price and cost information could not be verified. However, in the original investigation Customs and Border Protection found that growers were unprofitable for the periods of 2006/07 and 2007/08.

5.2.6 Return on investment and attractiveness for reinvestment

In the original investigation, Customs and Border Protection found that the Australian dried currant growers' return on funds employed and return on investment had decreased across the injury analysis period. These decreases were consistent with the unprofitable returns on sales of dried currants.

Customs and Border Protection found that the growers had suffered injury in the form of price depression and price suppression following the reductions received on their prices from the producers. It considered this reduction in the price paid to growers, particularly at a time of rising production costs, led to reduced production volumes. The consequent reduced production resulted in lower sales volumes.

In the original investigation, Customs and Border Protection found that currants exported to Australia from Greece at dumped prices had caused price depression and suppression for the Australian dried currant growers, and these price effects had resulted in unprofitable rates of return for dried currant growers. Customs and Border Protection found that the dried currant growers were unprofitable in 2006/07 and 2007/08 because the price paid for dried currants by the producers did not cover their CTMS of dried currants.

Customs and Border Protection found that dumping of currants from Greece had caused a loss of production and therefore a loss of sales volume by the Australian dried currant growers. In combination with the unprofitable rates of return, this had inevitably caused losses to the dried currant growers.

In the original investigation, Customs and Border Protection found that potential expenditure on capital projects for dried currants did not proceed.

5.3 Application for review and submissions to the Review Officer

The Frutex application to the TMRO raised several issues with respect to growers. Frutex argued that there "was no or insufficient evidence before Customs to enable it to arrive at the conclusions it made"²³ on material injury to both producers and growers in the Australian industry. In particular, there was no cost information for growers for the first two years of the injury analysis period. As a result of this missing information, Frutex submitted that "Customs cannot therefore have been satisfied that there was any price suppression or unprofitability for fully half of the period involved"²⁴.

Frutex submitted that cost information for the entire injury analysis period should have easily been attainable given that ADFA jointly lodged the application with Sunbeam. As ADFA is the peak body representing growers with a board that consists of seven growers, information should have been

²³ Frutex application to TMRO, p15 (paragraph 37)

²⁴ Frutex application to TMRO, p15 (paragraph 37)

provided or requested from them. Frutex claimed that although there may be no industry wide report available covering the missing years, this did not prevent growers from providing individual reports on which Customs and Border Protection could base findings. Frutex stated that Report 140 indicates that no such information was before Customs and Border Protection. As a result of this missing information, Frutex submits that material injury caused to the Australian industry could not have been properly established.

In the original investigation, Customs and Border Protection stated that "Australia dried currant growers are price takers of the dried currant sell price, and Sunbeam is a price maker". Frutex contended that there is no relationship between the price at which Australian producers sell currants and the price they pay to growers. Frutex therefore proposed that the financial position of the growers would appear to be irrelevant to any analysis undertaken by the investigation.

Another issue raised by Frutex concerned the growers' production volume analysis in Report 140. This analysis was used in support of the finding that low prices received by the growers caused injury through reduced production. Frutex considered that if there was such a linkage it was not evidence of material injury. Frutex stated that reduced production by growers may be the result of other factors such as an industry exit, destruction of vines or a decision not to harvest. Frutex contended that any injury needed to be based on profit and loss accounts and that suitable information was not obtained to make this assessment for two full years of the injury analysis period.

5.4 TMRO Report

The TMRO refers to Frutex arguments regarding missing cost data for half of the investigation period. The TMRO states that after consideration of this issue that he is "in some doubt as to whether the importation of currants from Greece at dumped prices has in fact caused material injury to the Australian processing industry"²⁵ (emphasis added).

The TMRO also refers to drought in the Murray Darling Basin and states that the drought has had "serious consequences for some smaller irrigation farmers"²⁶. Furthermore, the TMRO states that "factors such as ...prolonged drought in Australia in currant producing areas may have been more directly causative of injury to Sunbeam and currant growers than dumped imports"²⁷ (emphasis added).

The TMRO also considered that the economic interests of the processors (referred to in this report as producers) and growers are not identical. Specifically, the TMRO made reference to the possibility of producers receiving "diminished returns because of the profit taking by the processors, that they are little able to influence, particularly in an environment of depressed prices as a consequence of over production, and where the

²⁵ TMRO report, p2 (paragraph 9)

²⁶ TMRO report, p3 (paragraph 11)

²⁷ TMRO report, p5 (paragraph 17)

number of processors in the market is very small, as is the case here”²⁸. The TMRO referenced the contracts made between producers and growers, referring to the possibility that producers may have the ability to lock growers into contracts with fixed prices for many years that are impervious to fluctuations in world prices.

The TMRO also makes reference to the sales volume analysis findings in relation to Australian growers. The TMRO is of the view that even if a linkage is established between buy-in price and the decline in sales volume, that this does not establish material injury. The TMRO appears to consider, as Frutex submitted, that this would have to be established on the basis of profit and loss accounts.

The TMRO report noted the submission by Frutex on the conclusion in Report 140, that low prices received by the growers had caused reduced production. The TMRO indicated that the decision by growers to cease dried currant production in preference for more profitable crops may well have been caused by other factors such as the prolonged drought and increased costs.

The TMRO also noted a press release included in the submission to the original investigation by ADFA. The TMRO stated the article indicates “that there had been an oversupply of currants in world markets, but that reductions in production would be likely to result in improved returns to growers”. The press release also noted that as result of drought and wildfire in Greece, currant production there had declined by 15,000 tonnes in 2007. The TMRO went on to emphasise that the press release noted “that drought and heatwave conditions had reduced production during the growing season in all countries that produced currants, other than the United States”²⁹. The TMRO commented “it appears, there were shortages of currants and this brought about an upward movement in currant prices, potentially providing better returns to growers”³⁰.

5.5 The reinvestigation

The reinvestigation has confirmed that the dumping of currants from Greece has caused material injury to the Australian producers (see Chapter 4).

In reinvestigating injury to the growers of dried currants and the Australian industry and a possible causal link between the dumped exports and any injury to the growers of dried currants and the Australian industry, the following was considered:

- information contained in the application and verified during visits to the Australian industry;
- information on the Customs and Border Protection commercial data base;

²⁸ TMRO report, p4 (paragraph 18)

²⁹ TMRO report, p3 (paragraph 12)

³⁰ TMRO report, p3 (paragraph 12)

- submissions received in response to the publication of the initiation notice;
- information received from dried currant growers in response to questionnaires;
- information gathered and verified during visits to interested parties, including views expressed in visit reports;
- the SEF;
- submissions in response to the SEF;
- Report 140;
- the application and submissions to the TMRO as far as they related to the relevant information or conclusions based on the relevant information; and
- the TMRO's report.

As previously discussed, Customs and Border Protection has determined that currants produced in Australia fall within the legislative provision under subsection 269(T)(4B) relating to closed agricultural goods and that the Australian industry for the purpose of this reinvestigation consists of currant producers and dried currant growers.³¹

5.5.1 Price depression

The reinvestigation has reviewed the buy in price data for the injury analysis period.

In considering price effects, the reinvestigation examined the information from the following reports:

- The *'Dried Fruit Industry Benchmarking Final Report 2002/03 and 2003/04'*, developed by RMCG and Scholefield Robinson Mildura (SRM), which provided cost and price information in relation to dried currants for this period;
- The *'Dried Fruit Industry Benchmarking Report (2005 Benchmarking Report)*, based on a survey of dried fruit growers undertaken by RMCG and SRM; and
- The *'Economic Sustainability of Dried Grape Production'* (2007 Report), which provided costs and income data for the 2006/07 period, based on the updated 2005 Benchmarking Report; and
- *'Australian Currants – Cost of Production in the 2007/2008 Season'* (the 2008 Update Report) which updated the *'Dried Fruit Industry Benchmarking Final Report 2002/03 and 2003/04'* with cost and income data for 2007/08.

The buy in prices provided in the 2005 Benchmarking Report, 2007 Economic Sustainability Report and the 2008 Cost Update Report were compared to Sunbeams 2005-2008 harvest seasonal pricing and payments schedules.

³¹ Section 5.2.2 of this report.

The reinvestigation found the information from both sources was consistent. The reinvestigation has also compared this information to the data provided in the growers questionnaires collected during the original investigation. The reinvestigation has found the average weighted prices used to examine the earnings and profitability of dried currant growers was reliable.

Using the average prices provided in Sunbeam's seasonal pricing and payments schedules, the reinvestigation confirmed that the weighted average price per tonne decreased from \$1,783 per tonne in 2004/05 to \$1,280 per tonne in 2005/06 and 2006/07. Prices recovered to around \$1,550 per tonne in 2007/08 but remained well below the peak of 2004/05.

The reinvestigation also notes the decrease in buy in price paid to growers followed the decrease in producers' sales price of processed dried currants in the industrial segment.

The reinvestigation noted the movement in Sunbeam's buy in prices was not reflective of a policy by producers to lock growers into fixed pricing contracts as suggested by the TMRO. The reinvestigation considers the Sunbeam pricing strategy was made on a rational and calculated commercial basis in response to the presence of dumped imports of Greek currants. The reinvestigation has further explored the relationship between prices achieved by Australian producers and the prices they paid to dried currant growers later in this report.

The reinvestigation considers that decreased buy in prices offered to growers by producers was a result of the decreased selling prices in the industrial market segment. The reinvestigation has concluded that these decreases were a result of price undercutting and price pressure from dumped exports of Greek currants.³²

The reinvestigation is satisfied that dried currant growers have experienced price depression due to the presence of dumped exports of currants from Greece.

5.5.2 Price suppression

The reinvestigation noted the absence of cost data for growers over the period 2004/05 to 2005/06. However this lack of earlier data does not prevent a finding of injury to growers. Section 5.5.8 of this report discusses in detail the basis for this finding.

The reinvestigation compared the information available on the growers' weighted average selling price per tonne and CTMS per tonne for the 2006/07 and 2007/08 harvest years. It found that costs were above the buy in price for both harvest years. The reinvestigation also notes the significant increase in costs for the 2007/08 harvest year and that the increase in costs and Sunbeam's buy in price for 2007/08 did not increase at the same rate.

In its application to the TMRO, Frutex argued that in the original investigation Customs and Border could not establish price suppression (and profitability)

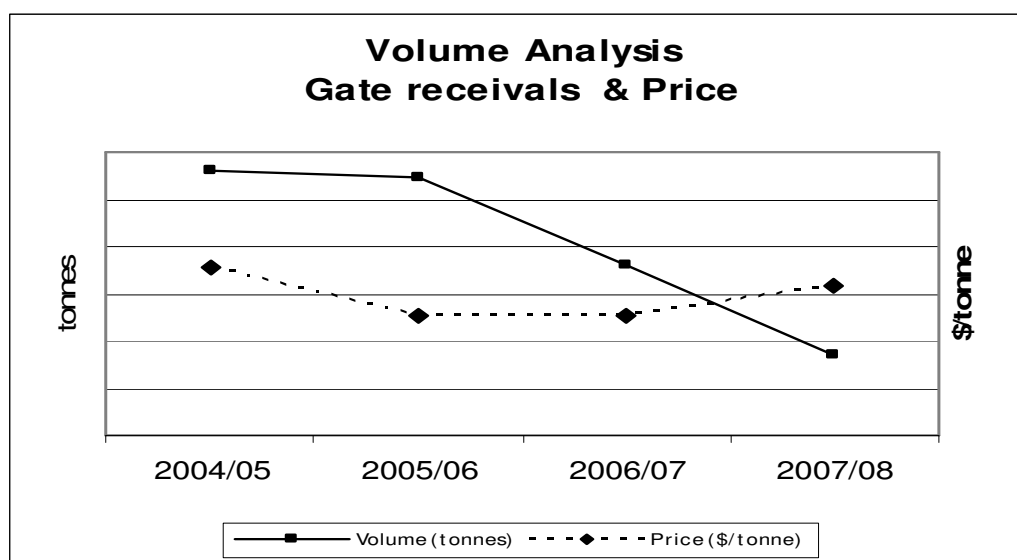
³² Section 4.5.2 of this report.

for growers because cost data was missing for the period 2004/05 to 2005/06. While this absence of data is discussed further at section 5.5.8, the reinvestigation emphasises that data were obtained from growers of dried currants in responses to questionnaires. That data were provided following the Customs and Border Protection request for the cost of producing currants (average unit cost of water, average unit cost of fertilizer, unit cost of casual labour etc) for crops for the financial years 2003/04 to 2007/2008, inclusive.

The reinvestigation is satisfied that dried currant growers have experienced price suppression in the periods 2006/07 and 2007/08.

5.5.3 Loss of sales volume

In analysing loss of sales volume, the reinvestigation examined the grower production gate receipts for the period 2004/05 to 2007/08. The chart below details the decline in grower sales volumes and prices.



The reinvestigation considered whether decreased selling prices into the industrial segment of the market by producers, which were considered suppressed due to dumped imports of currants, was a factor in growers receiving lower prices from the producers and therefore reducing production volumes.

The reinvestigation noted anecdotal information from some Australian growers indicating that they would probably switch to more profitable crops. The reinvestigation considers this a logical commercial decision given the unprofitable results for dried currant production in both 2006/07 and 2007/08. The prices received by growers in 2006/07 and 2007/08 had not recovered to the levels in 2004/05.

The reinvestigation has confirmed that Australian growers are experiencing price suppression as a result of dumped exports of currants. The reinvestigation considers that on the basis of reduced returns, Australian growers of dried currants would have no incentive to continue cultivation of dried currant crops and would switch to more profitable crops. This view is

supported by the decrease of sales volumes coinciding with the decrease in sales price paid to Australian dried currant growers.

The reinvestigation is satisfied that the decision by some dried currant growers to reduce production is a direct consequence of the lower prices and considers that dried currant growers have experienced loss of sales volume.

5.5.4 Unprofitable rates of returns

The reinvestigation has confirmed that both price depression and price suppression experienced by growers was a result of the dumped exports of currants.

The reinvestigation has examined the available reports on production costs for growers over the period 2006/07 to 2007/08, in conjunction with the buy in prices from Sunbeam. Analysis of that information confirmed that growers had been unprofitable with respect to dried currants. The losses experienced by the growers were due to the growers' CTMS of dried currants exceeding the prices paid for dried currants by the producers.

The reinvestigation is satisfied that dumping of currants has resulted in injury to growers in the form of unprofitable rates of return.

5.5.5 Return on investment and attractiveness for reinvestment

The reinvestigation has confirmed that dried currant growers were unprofitable for 2006/07 and 2007/08 because their CTMS exceeded the prices received from the producers. With negative returns experienced over this period, the reinvestigation considers that growers were unwilling to reinvest in new technology. Evidence demonstrates that dried currant growers were not investing in state-of-the-art trellis and irrigation systems.

The negative returns were a direct result of the reduced prices received by growers from producers, because of price pressure in the industrial segment of the market from dumped exports of Greek currants.

The reinvestigation is satisfied that dumping of currants has resulted in reduced return on investment and reduced attractiveness for reinvestment.

5.5.6 Impact of the drought

The reinvestigation has examined the information available and claims by interested parties that drought and increased costs may have been the cause of some growers deciding to cease production of currants.

The reinvestigation has examined the growers' water allocation data obtained during the visit to ADFA. While the cost of water increased, the water supply allocation in the 2006/07 period (for the production of the 2007 crop which was included within the investigation period) remained close to the normal level. It was in July 2007 when water allocations were significantly reduced to around 43 per cent.

However the reinvestigation notes from the ADFA visit report³³, that currant growers were classified as “High Security” users and as such receive a full entitlement to their permanent irrigation needs. The reinvestigation considers, notwithstanding the rise in water costs, that climatic conditions or drought are not factors that primarily caused growers to reduce or cease production, as water allocations, while reduced, were still available.

The TMRO suggests that the drought in the Murray Darling Basin may have been more directly causative of injury rather than merely exacerbating the injury. The reinvestigation considers, notwithstanding the rise in water costs, and despite the restricted water allocations, that climatic conditions or drought are not factors that primarily caused growers to reduce or cease production.

The reinvestigation considers that the higher costs of water contributed to the level of price suppression experienced by growers and as such, exacerbated the injury caused by price pressure.

5.5.7 World oversupply

The reinvestigation examined the press release concerning the world oversupply of currants referred to by the TMRO.

The press release concerns world dried grape production including currants, sultanas and Thompson Seedless Raisins (TSR). The possible higher returns for growers, because of an expected shortage of product, appear to be a reference to a shortage of sultanas and TSR, not currants. Based on the article content, it could be argued that in the case of Australian growers any higher returns received would occur in respect of sultana and TSR varieties.

Further, it is not clear to the reinvestigation how, where imports are found to be dumped, a world oversupply could be seen as a factor that was causing injury to an Australian industry, rather than the dumping. Market prices of a product will normally fluctuate with changes in supply and demand. To the extent that an oversupply might lower prices in the domestic market of the country of export, Australian producers would need to compete in a market where the undumped prices were lower. However, in this case imports were found to be dumped and causing injury to the Australian industry. A world oversupply may have contributed to dumping occurring but the injury should still be attributed to the exportation of the goods and not the world oversupply.

5.5.8 Absence of grower data for two financial years

Frutex argued that there “was no or insufficient evidence before Customs to enable it to arrive at the conclusions it made”³⁴ on material injury to both producers and growers in the Australian industry. In particular, there was no cost information for growers for first two years of the injury analysis period.

³³ ADFA visit report page 12

³⁴ Frutex application to TMRO, p15 (paragraph 37)

In the original investigation, Customs and Border Protection concluded that processed dried currants are close processed agricultural goods and, therefore, that the Australian industry consists not only of the person or persons producing the processed goods but also of the person or persons procuring the raw agricultural goods. Frutex did not take issue with this conclusion, agreeing that considering injury to both producers of currants and dried currant growers was called for by the “close processed agricultural goods” provisions of the Act³⁵.

The reinvestigation established that the analysis of injury to the currant growers in Report 140, was based on three reports which together included cost and price information covering the financial years 2002/03, 2003/04, 2006/07 and 2007/08.

In addition, information on average selling prices achieved by the growers in 2004/05 and 2005/06 was available from the major producer, Sunbeam. However, grower cost and therefore profit information was not available for those years.

Five of ADFA’s largest dried currant growers, representing approximately 12 percent of total Australian dried currant production, responded to the questionnaire issued in relation to the investigation. The information provided by these growers included profit and loss accounts for 2003/04 to 2007/08 inclusive. This information was used to test the reasonableness of income and costs data contained in the most recent report on the condition of the industry, the 2008 Cost Update Report.

The growers providing information to the investigation grew more than currants and their profit and loss statements related to their total production. Even if it had been considered reasonable to expect the growers to estimate costs and profits for currants alone, the reinvestigation did not consider this was necessary when industry reports provided what the reinvestigation considers to be reliable cost, price and profit data for the previous two financial years.

Customs and Border Protection often looks across a period of three to four years to assist in identifying trends in the injury factors. For example, the analysis may show an industry’s performance deteriorating in the last 12 months compared to the trend of the previous years. The length of the injury analysis period sometimes assists in establishing a link between dumped imports and injury by showing the industry’s performance before and after the impact of dumping. However, there is no expectation that the industry should demonstrate material injury over the entire period.

In this case, detailed reports of production costs were available that, in the reinvestigation’s view, demonstrated that the growers of currants had suffered injury in 2006/07 and 2007/08. The reinvestigation re-examined these reports. They were not taken at face value but were corroborated with information supplied by Sunbeam and a number of growers. The absence of

³⁵ Para 40 Frutex application to TMRO dated 13 February 2009

older data, which largely provides context to the more recent information, does not, in this case, prevent a finding of injury to growers.

After reinvestigating this finding, Customs and Border Protection maintains its view that the currant growers have suffered material injury caused by dumped imports from Greece.

5.5.9 Link between producers and growers

The reinvestigation considers that the proposition that because Australian currant growers are price takers and Sunbeam a price maker, there is no relationship between the producer's selling prices and the prices producers pay to growers is not sustainable either in theory or on the facts of this case.

As the TMRO points out in his report³⁶, the 'close processed agricultural goods' provisions were introduced recognising that agricultural producers are often price takers and the prices they receive depend on the prices their buyers are able to command for their processed products. The relative bargaining strengths of producers would tend to mean that producers are in a good position to pass on any pain suffered. Hence, injury to raw agricultural producers is taken into account in investigations involving such products.

The currants case appears to be a good example of how, when faced with undercutting by Greek imports and declining average selling prices in the industrial sector, Sunbeam was able to significantly reduce the price it paid to growers. This would seem rational behaviour for Sunbeam in its position as a price maker. In this instance, the relationship between the price received by Sunbeam and the price it paid to growers is clear.

There may be a case for saying that price making producers are in a position to refrain from passing on to growers some or all of any price increases they achieve. However, this is not a reason to disregard injury suffered by the growers where producers, faced with competition from dumped imports, reduce the price paid to the growers.

The TMRO also refers to Frutex's view that the volume analysis that appears on page 58 of Report 140 is an attempt to demonstrate that low prices have caused injury by reducing production, but that even if there is such a linkage it is not evidence of material injury. Frutex submitted, and it appears the TMRO adopted the position, that injury would need to be established on the basis of profit and loss accounts.

The analysis on page 58 of Report 140 concludes that the sales volume of dried currant growers declined since 2005/06 and notes that this occurred following a reduction in the price paid for currants by Australian producers. The WTO Anti-dumping Agreement requires that the examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry. This includes an evaluation of the sales

³⁶ TMRO report, p4 (paragraph 17)

volumes of the Australian industry, which in this case, includes dried currant growers.

Reduced sales volumes of the growers alone may not be determinative of material injury but was one factor considered in reaching a conclusion that the Australian industry suffered material injury. It is not clear what Frutex means when it says that injury would need to be established on the basis of profit and loss accounts. If it is suggesting that regard should only be had to an income statement in assessing injury to the industry, this is not an approach that would be consistent with the WTO Anti-Dumping Agreement.

5.6 Summary of injury to Australian growers of dried currants and the Australian industry

In the earlier assessment of injury to the Australian producers, the reinvestigation noted the finding of significant dumping margins of exports of currants from Greece. It also confirmed that exports of Greek currants were predominantly sold into the industrial market segment.

The reinvestigation also identified that these exports undercut the Australian producers selling prices in the industrial market segment and resulted in the strategy adopted by Australian producers to reduce selling prices.

The reinvestigation is satisfied that:

- dried currant growers experienced price depression due to the presence of dumped exports of currants from Greece;
- dried currant growers experienced price suppression in the periods 2006/07 and 2007/08;
- the decision of some dried currant growers to reduce production is a direct result of the lower prices received and considers that dried currant growers have experienced loss of sales volume;
- dumping of currants has resulted in injury to growers in the form of unprofitable rates of return; and
- dumping of currants has resulted in reduced return on investment and reduced attractiveness for reinvestment. for the Australian industry as a whole.

The reinvestigation has confirmed that there is a causal connection between the dumped imports of currants from Greece and the injury experienced by the Australian growers of currants.

The growers returns were affected by the reduced prices from producers and taking account of the size of the dumping margin and the volume, price, profit and investment factors, the reinvestigation considers that the injury caused to both the dried currant growers and the Australian industry by the dumping is material.

5.7 Customs and Border Protection decisions in relation to findings in Report 140

The reinvestigation affirms the finding in Report 140 that dumped exports from Greece caused material injury to the Australian growers of dried currants in the form of:

- price depression;
- price suppression;
- loss of sales volume; and
- unprofitable rates of return.

The reinvestigation affirms the finding in Report 140 that dumped exports of currants from Greece have caused material injury to Australian industry in the form of:

- reduced return on investment for dried currant growers; and
- reduced attractiveness for re-investment for dried currant growers.

6 Material injury to the Australian industry

Currants are close processed agricultural goods in accordance with subsection 269T(4B) of the Act. Consequently the Australian industry includes both the growers (of dried currants) and producers (of currants).

The reinvestigation has considered the injury analysis and causation separately for both growers of dried currants and the producers of currants and has concluded that both the producers and growers have suffered injury and that that injury was material.

Having regard to those findings, the reinvestigation considers that the Australian industry, comprising both the growers of dried currants and producers of currants, has suffered material injury.

It follows from Customs and Border Protection's conclusions in relation to the findings to be reinvestigated that it remains satisfied that there are reasonable grounds to be satisfied that:

- currants exported to Australia from Greece at dumped prices have caused material injury to Australian producers of currants;
- currants exported to Australia from Greece at dumped prices have caused material injury to Australian dried currant growers; and
- currants exported to Australia from Greece at dumped prices have caused material injury to the Australian industry, comprising both the producers of currants and the dried currant growers

and recommends that the Minister affirm the reviewable decision to publish dumping duty notices³⁷ in respect of dried currants exported to Australia from Greece.

³⁷ Under s. 269TG(1) and (2).

7. Evidence or other material relied upon.

In making its findings, the reinvestigation had regard to the following material or other evidence:

- information contained in the application and verified during visits to the Australian industry;
- information on the Customs and Border Protection commercial data base;
- information received from dried currant growers in response to questionnaires;
- submissions received in response to the publication of the initiation notice;
- information gathered and verified during visits to interested parties, including views expressed in visit reports;
- the SEF;
- submissions in response to the SEF;
- Report 140;
- the application and submissions to the TMRO as far as they related to the relevant information or conclusions based on the relevant information; and
- the TMRO's report.