



Australian Government
Australian Customs Service

R E P O R T

CUSTOMS ACT 1901 - PART XVB

TRADE MEASURES REPORT 130

TERMINATION OF AN INVESTIGATION

CERTAIN MOBILE GARBAGE BINS (MGBs)
EXPORTED FROM THAILAND

25 February 2008

CONTENTS

| | | |
|----------|--|-----------|
| 1 | ABBREVIATIONS | 4 |
| 2 | INTRODUCTION | 5 |
| 2.1 | SUMMARY | 5 |
| 2.2 | THE APPLICATION | 5 |
| 2.3 | CUSTOMS INVESTIGATION..... | 6 |
| 2.4 | RESULTS OF THE INVESTIGATION..... | 6 |
| 2.5 | PUBLIC RECORD..... | 7 |
| 3 | BACKGROUND..... | 8 |
| 3.1 | PREVIOUS INVESTIGATIONS CONCERNING MGBS | 8 |
| 4 | GOODS | 9 |
| 4.1 | GOODS THE SUBJECT OF THE APPLICATION | 9 |
| 5 | LIKE GOODS AND AUSTRALIAN INDUSTRY | 10 |
| 5.1 | DOES THE AUSTRALIAN INDUSTRY MANUFACTURE LIKE GOODS TO THE GUC?..... | 10 |
| 5.2 | ARE BIN BODIES LIKE GOODS TO MGBS?..... | 11 |
| 5.3 | AUSTRALIAN MANUFACTURERS | 12 |
| 5.4 | MANUFACTURING/PRODUCTION PROCESS..... | 13 |
| 5.5 | SUBSTANTIAL MANUFACTURE | 13 |
| 6 | AUSTRALIAN MARKET..... | 14 |
| 6.1 | MARKET SUPPLY | 14 |
| 6.2 | COMPETITION IN THE MARKET..... | 14 |
| 6.3 | MARKET SEGMENTS | 14 |
| 6.4 | IMPORT VOLUMES..... | 15 |
| 6.5 | MARKET SIZE AND SHARE..... | 15 |
| 6.6 | MARKET DEMAND..... | 16 |
| 7 | THE DUMPING INVESTIGATION..... | 17 |
| 7.1 | INTRODUCTION..... | 17 |
| 7.2 | SUPPLY CHAIN FOR MGBS EXPORTED FROM THAILAND..... | 17 |
| 7.3 | COOPERATION OF MANUFACTURER, SUPPLIERS AND IMPORTERS | 17 |
| 7.4 | IDENTITY OF THE EXPORTER AND IMPORTERS..... | 18 |
| 7.5 | EXPORT PRICE..... | 18 |
| 7.6 | NORMAL VALUE | 19 |
| 7.7 | DUMPING MARGIN | 20 |
| 8 | ECONOMIC CONDITION OF THE INDUSTRY..... | 21 |
| 8.1 | INTRODUCTION..... | 21 |
| 8.2 | APPLICANTS' CLAIMS | 21 |
| 8.3 | GENERAL APPROACH TO INJURY ANALYSIS..... | 21 |
| 8.4 | PRICE EFFECTS | 22 |
| 8.5 | VOLUME EFFECTS..... | 25 |
| 8.6 | PROFIT AND PROFITABILITY | 26 |
| 8.7 | OTHER INJURY FACTORS..... | 27 |
| 8.8 | CONCLUSION – ECONOMIC CONDITION OF THE INDUSTRY..... | 29 |

| | | |
|-----------|--|-----------|
| 9 | HAS DUMPING CAUSED MATERIAL INJURY? | 30 |
| 9.1 | DUMPED IMPORTS..... | 30 |
| 9.2 | APPLICANTS' CLAIMS..... | 30 |
| 9.3 | SRITHAI AND OTTO CLAIMS..... | 31 |
| 9.4 | CUSTOMS ASSESSMENT..... | 31 |
| 9.5 | OTHER POSSIBLE CAUSES OF INJURY..... | 33 |
| 9.6 | CONCLUSION..... | 35 |
| 10 | THREAT OF MATERIAL INJURY | 36 |
| 10.1 | APPLICANTS' CLAIMS..... | 37 |
| 10.2 | CUSTOMS ASSESSMENT AT INITIATION..... | 37 |
| 10.3 | INVITATION TO COMMENT TO INTERESTED PARTIES..... | 37 |
| 10.4 | TENDERS SINCE THE INVESTIGATION PERIOD..... | 39 |
| 10.5 | IMPORTS SINCE THE INVESTIGATION PERIOD..... | 39 |
| 10.6 | CUSTOMS ASSESSMENT..... | 40 |
| 11 | NON-INJURIOUS PRICE | 42 |
| 11.1 | SUBMISSIONS BY INTERESTED PARTIES..... | 42 |
| 11.2 | CUSTOMS APPROACH..... | 42 |
| 11.3 | COMPARISON OF NIP TO EXPORT PRICE..... | 43 |
| 12 | RECOMMENDATION | 44 |
| 13 | LIST OF APPENDICES | 45 |

| 1 ABBREVIATIONS | |
|------------------------|--|
| ACDN | Australian Customs Dumping Notice |
| Act | Customs Act 1901 |
| Applicants | Sulo, Nylex, Mastec |
| Brickwood | Brickwood Holdings Pty Ltd |
| CEO | Chief Executive Officer of Customs |
| Clean Sweep | Asteranch Pty Ltd trading as Clean Sweep |
| CTMS | Cost to make and sell |
| Customs | Australian Customs Service |
| FOB | Free on board |
| FY03/04 | Financial year 1 July 2003 to 30 June 2004 |
| FY04/05 | Financial year 1 July 2004 to 30 June 2005 |
| FY05/06 | Financial year 1 July 2005 to 30 June 2006 |
| FY06/07 | Financial year 1 July 2006 to 30 June 2007 |
| Global | Global Bins Pty Ltd |
| GUC | Goods under consideration |
| HDPE | High density polyethylene |
| IDD | Interim Dumping Duty |
| Mastec | Mastec Australia Pty Ltd |
| MGBs | Mobile Garbage Bins |
| Minister | Minister for Home Affairs |
| NIP | Non-Injurious Price |
| Nylex | Nylex Limited |
| OSGS | OneStop Garbage Shop |
| Ossie | Ossie Plastics Systems Pty Ltd |
| Otto | Otto Waste Systems Singapore PTE LTD |
| SEF | Statement of essential facts |
| SriThai | SriThai Superware Public Company Limited |
| Sulo | Sulo MGB Australia Pty Ltd |
| The goods | The goods the subject of the application |
| TM108 | Trade Measures Report No.108 |
| TM122 | Trade Measures Report No.122 |
| TM127 | Trade Measures Report No.127 |
| USP | Unsuppressed Selling Price |
| WA | Western Australia |
| WTO | World Trade Organization |

2 INTRODUCTION

2.1 SUMMARY

This report represents the results of the Australian Customs Service (Customs) investigation into allegations that certain mobile garbage bins (MGBs) exported to Australia from Thailand have been at dumped prices, and that the dumping caused material injury to the Australian industry producing like goods.

This report recommends the termination of the investigation on the basis that dumping has caused negligible injury.

2.2 THE APPLICATION

On 13 August 2007, three members of the Australian industry manufacturing MGBs lodged an application requesting that the then Minister for Justice and Customs publish a dumping duty notice in respect of certain 240 litre MGBs exported to Australia from Thailand.

The application was lodged on behalf of:

- Nylex Limited (Nylex)
- Mastec Australia Pty Ltd (Mastec)
- Sulo MGB Australia Pty Ltd (Sulo)

hereafter referred to collectively as the applicants.

The application alleged that certain 240 litre MGBs had been exported to Australia from Thailand at prices lower than the normal values, and that dumping had caused material injury to the Australian industry through:

- lost sales volume;
- lost market share;
- price undercutting;
- price suppression;
- negative profits and profitability;
- underutilisation of capacity;
- increased inventory levels;
- inadequate return on investment;
- reduced employment levels; and
- reduced revenue.

2.3 CUSTOMS INVESTIGATION

2.3.1 Legislation

Part XVB of the *Customs Act 1901* (the Act), and the *Customs Tariff Anti-Dumping Act 1975*, contain Australia's anti-dumping and countervailing legislation. Remedies are available where dumping (or subsidy) causes, or threatens to cause, material injury to an Australian industry.

2.3.2 Investigation notification and procedures

On 8 October 2007, Customs published a notice in *The Australian* newspaper advising acceptance of the application and the initiation of the investigation, and published Australian Customs Dumping Notice (ACDN) 2007/39 outlining the investigation procedures. This ACDN was amended by ACDN 2007/48. In ACDN 2007/48 Customs confirmed that the SEF would be placed on the public record by 26 January 2008, and that Customs must report to the then Minister for Justice and Customs on or before 11 March 2008.

Customs is required to place on the public record, within 110 days of initiation of an investigation, a statement of the essential facts (SEF) on which it proposes to base its recommendation to the Minister for Home Affairs (Minister). Interested parties are given 20 days to respond to issues raised in the statement.

In January 2008, the Minister agreed to extend the deadline for Customs to place the SEF on the public record to 25 February 2008. The extension was notified in ACDN 2008/01.

Due to the extension of time for publication of the SEF, Customs was required to make its final report and recommendations to the Minister on, or before, 10 April 2008.

2.3.3 Investigation and injury analysis periods

Customs has examined exports of the goods from Thailand to Australia during the period 1 July 2006 to 30 June 2007 to determine whether dumping has occurred. Customs has examined details of the Australian market from 1 July 2004 for injury analysis.

2.4 RESULTS OF THE INVESTIGATION

As a result of its investigation, Customs has found that:

- 240 litre MGBs were exported from Thailand to Australia at dumped prices, with a dumping margin of 13%;
- The Australian MGB industry experienced injury in the forms of price undercutting, price suppression, lost sales volume, lost market share, negative profits and negative profitability;
- The injury, if any, to the Australian MGB industry that has been, or may be, caused by the dumping of 240 litre MGBs from Thailand is negligible; and

- the dumping of 240 litre MGBs from Thailand has not threatened material injury to the Australian MGB industry.

This report recommends the termination of the investigation in accordance with s. 269TDA(13) of the Act on the basis that dumping has caused negligible injury. Where investigations are terminated before the SEF is completed an SEF is not placed on the public record.

Applicants may request a review of a decision to terminate an investigation by lodging an application with the Trade Measures Review Officer, in accordance with the requirements of Division 9 of Part XVB of the Act, within 30 days of the publication of the termination notice.

2.5 PUBLIC RECORD

Customs maintained a public record throughout the investigation. The public record includes public versions of the application, the Customs initiation report, Customs visits reports, and submissions by interested parties. This report should be read in conjunction with the material available on the public record.

Any party wishing to examine the public record should contact the Trade Measures Office Management staff on (02) 6275 6547.

All Customs dumping notices are available on the Internet at <http://www.customs.gov.au> (follow prompts for “Dumping”).

3 BACKGROUND

3.1 PREVIOUS INVESTIGATIONS CONCERNING MGBS

3.1.1 Original investigation TM108

Anti-dumping measures on certain 120 litre and 240 litre MGBs exported to Australia from Malaysia were originally imposed on 27 February 2006 following the then Minister for Justice and Customs acceptance of the recommendations in Trade Measures Report No. 108 (TM108). Anti-dumping measures were imposed in the form of interim dumping duties (IDD).

3.1.2 Reinvestigation TM122

Following a Customs reinvestigation, as detailed in Trade Measures Report No. 122 (TM122), anti-dumping measures applying to MGBs exported to Australia from Malaysia were revised. The export price and normal value for both 120 litre and 240 litre MGBs increased, resulting in a small increase in the level of IDD on 120 litre and 240 litre MGBs exported from Malaysia.

3.1.3 Review TM127

Following a review of anti-dumping measures, as detailed in Trade Measures Report No. 127 (TM127), the measures applying to MGBs exported to Australia from Thailand were revised. The review resulted in an increase in the level of IDD on 120 litre and 240 litre MGBs exported from Malaysia.

4 GOODS

4.1 GOODS THE SUBJECT OF THE APPLICATION

The goods under consideration (GUC) are:

MGBs, whether exported assembled or unassembled, of 240 litre nominal capacity, including but not limited to MGBs meeting European Standard EN840. MGBs typically consist of a bin body, bin lid, two wheels, an axle, lid pins, and in some instances a bin divider. MGBs in other nominal sizes (e.g. 80 litre, 120 litre, 140 litre, and 360 litre) are excluded.

The GUC are classified to subheading 3924.90.00, statistical codes 09 and 10 of Schedule 3 to the *Customs Tariff Act 1995*. The rate of duty on these goods from Thailand is free.

5 LIKE GOODS AND AUSTRALIAN INDUSTRY

5.1 DOES THE AUSTRALIAN INDUSTRY MANUFACTURE LIKE GOODS TO THE GUC?

Like goods are defined in section 269T(1) of the Act as goods that are identical in all respects to the GUC or that, although not alike in all respects to the GUC, have characteristics closely resembling those of the GUC.

No one characteristic is of itself sufficient to ascertain whether goods are 'like'. Customs generally gives greater weighting to physical characteristics, and commercial and functional substitutability, although the importance of any characteristic will inevitably vary depending on the goods being considered.

During the investigation Customs obtained documentation and discussed the claims concerning like goods with the Australian industry, importers, and end-users.

Customs considers that, while there may be certain differences in the physical characteristics of the imported and the locally manufactured products, the MGBs produced by the Australian industry have physical characteristics closely resembling the MGBs imported from Thailand. Specifically, Customs notes the MGBs manufactured in Australia are like to the GUC in that they:

- have similar physical dimensions in shape and form (including weight and wall thickness);
- are manufactured in accordance with the requirements of standard EN840; and
- are made from the same raw material (high density polyethylene (HDPE)).

Customs also considers that MGBs manufactured in Australia are like to the GUC in that they:

- have similar manufacturing processes;
- have similar distribution and marketing channels;
- are commercially and functionally substitutable; and
- compete directly with each other in the market for MGBs.

Customs is satisfied that 240 litre MGBs produced by the Australian MGB industry are like goods to the GUC.

5.2 ARE BIN BODIES LIKE GOODS TO MGBS?

In Trade Measures Initiation Report 130, Customs indicated that it would assess whether bin bodies are like to complete MGBs.

Customs visited interested parties and, at interview, asked interested parties if they considered bin bodies to be like goods to complete MGBs.

All five Australian MGB manufacturers visited stated that bin bodies were like goods to complete MGBs, principally because the bin body represented a large percentage of the cost of production and mass of an MGB. They also considered the bin body's only purpose was to be used as a complete MGB.

The other interested parties involved in the importation of 240 litre MGBs from Thailand; Ossie Plastics Systems Pty Ltd (Ossie), and Asteranch Pty Ltd trading as Clean Sweep (Clean Sweep), did not express an opinion.

Customs met with representatives from the councils of the Cities of Joondalup (Joondalup) and Kalgoorlie-Boulder (Kalgoorlie) in Western Australia (WA). The two councils stated they did not believe that bin bodies were like to MGBs because, as an end-user, they would not purchase a bin body alone.

5.2.1 Applicants' Claims

The applicants expressed the view that an MGB bin body is a like good to an MGB. In support of its claim, the applicants raised the following issues:

- A bin body is integral to the MGB itself;
- A bin body is the essential characteristic of the MGB;
- A bin body has no alternate function other than for use as an MGB;
- A bin body accounts for the major proportion of the cost of an MGB; and
- Sales of bin bodies are insignificant compared to sales of complete MGBs.

5.2.2 Other interested party claims

Customs received one submission on the issue of like goods on behalf of:

- Sri Thai Superware Public Company Limited (Thailand) (SriThai) - the manufacturer of the MGBs exported from Thailand; and
- Otto Waste Systems Singapore PTE LTD (Otto).

In the submission, SriThai and Otto expressed the view that an MGB bin body is not a like good to an MGB.

SriThai and Otto stated that when separately exported in an unassembled condition, bin bodies are not within the scope of the goods under investigation.

SriThai and Otto further stated that bin bodies should not be included in Customs analysis of material injury.

5.2.3 Customs Assessment

Customs has examined the information presented by interested parties at interview and the claims made by the applicants and other interested parties.

Customs notes that a bin body:

- has physical characteristics that closely resemble a complete MGB;
- requires the major production effort in the manufacture of MGBs;
- is the major component of a complete MGB representing the majority of both the cost of production and the mass of an MGB;
- has only been sold by importers when incorporated with other components to form a complete MGB; and
- has no other functional purpose than to be used as an MGB.

With reference to physical, functional and production likeness, Customs is of the view that bin bodies are like goods to the GUC.

Customs also notes that sales of bin bodies by the applicants were negligible in the investigation period and that a market for bin bodies does not exist in Australia. As such, sales of bin bodies have not been included in Customs injury analysis.

5.3 AUSTRALIAN MANUFACTURERS

In TM108, Customs was satisfied that MGBs were manufactured and sold by four Australian industry members (Sulo, Nylex, Waste and Recycling Services (SA) Pty Ltd¹ and One Stop Garbage Shop (OSGS)).

For this investigation (TM130), Customs identified two further manufacturers; Brickwood Holdings (Brickwood), and Global Bins (Global). All six manufacturers were contacted in relation to this investigation. As noted, Nylex, Mastec and Sulo are the applicants to this investigation.

Customs verified the applicants' production and sales data.

¹ Waste and Recycling Services (SA) Pty Ltd now trades as Mastec Pty Ltd

Brickwood and OSGS provided 240 litre MGB summary sales data to Customs. Customs did not verify either company's records. Global did not provide any production or sales data.

5.4 MANUFACTURING/PRODUCTION PROCESS

MGBs are produced using an injection moulding process.

The manufacturing process involves the mixing of the required raw materials, primarily HDPE, which is then heated, blended, and injected under pressure into the specific tooling. The process uses a combination of pressure, temperature, and cooling to form the finished MGB product (the same process is required to manufacture the lid component).

The product is removed from the tooling and stamped with the customer's logo and/or serial code.

The product is then made available for an operator to manually place the product into a stack for distribution to the customer.

5.5 SUBSTANTIAL MANUFACTURE

Customs visited the three applicants and observed the manufacturing processes.

The applicants manufacture the MGB bodies, lids and pins (and dividers if applicable) using the injection moulding process. The companies import the wheels and axles.

Production and cost information provided by the applicants indicate that manufacturing undertaken in Australia accounts for the large majority of total production cost of an MGB.

Customs considers the manufacturing operations undertaken by the applicants, including the injection moulding, are substantial processes in the manufacture of 240 litre MGBs. Customs is satisfied that the 240 litre MGBs made and sold by the applicants are substantially manufactured in Australia.

6 AUSTRALIAN MARKET

6.1 MARKET SUPPLY

During the investigation period, the Australian market for 240 litre MGBs was supplied by the three applicants, three smaller Australian manufacturers, and imports from Malaysia and Thailand.

6.2 COMPETITION IN THE MARKET

The Australian manufacturers compete with imported MGBs as well as with each other. The Australian manufacturers may sell through local agents in regional markets. In the case of larger waste management contracts they sell directly to the waste management companies, such as SITA Environmental Solutions or Cleanaway.

The majority of interested parties stated that price is an important factor in purchasing decisions and most interested parties considered the market to be price sensitive.

The largest group of consumers of 240 litre MGBs is local government authorities (Councils).

The tender processes in relation to council procurement of MGBs are public, and the outcomes of the tenders are also, in some cases, available to the public. These circumstances, and the market intelligence gathered by suppliers of MGBs in Australia, combine to provide for a reasonably transparent MGB market in terms of price awareness among competitors and customers.

The MGB market is segmented and pricing in each state is influenced by the high cost of freight to areas that are distant from the manufacturing sites.

6.3 MARKET SEGMENTS

Customs identified three major market segments for 240 litre MGBs:

- The tender market – for the supply of MGBs in large volumes to all households by a local council to be used for the purposes of garbage/recycling/organic waste collection;
- The ‘top-up’ or growth and replacement market – for the supply of MGBs in small volumes (relative to individual tenders) to councils for new suburb developments or the replacement of MGBs that are lost, stolen, damaged or destroyed; and
- The general sales market – includes general retail and specific applications such as secure document destruction, food storage and hospital waste disposal.

The applicants generally agreed that a small percentage of the total MGB market was accounted for by the general sales market segment and that the remainder of the market could be divided approximately equally between the tender and top-up market segments.

6.4 IMPORT VOLUMES

Customs estimated import volumes of 240 litre MGBs for the investigation period using information from Customs import database and verified information provided by importers.

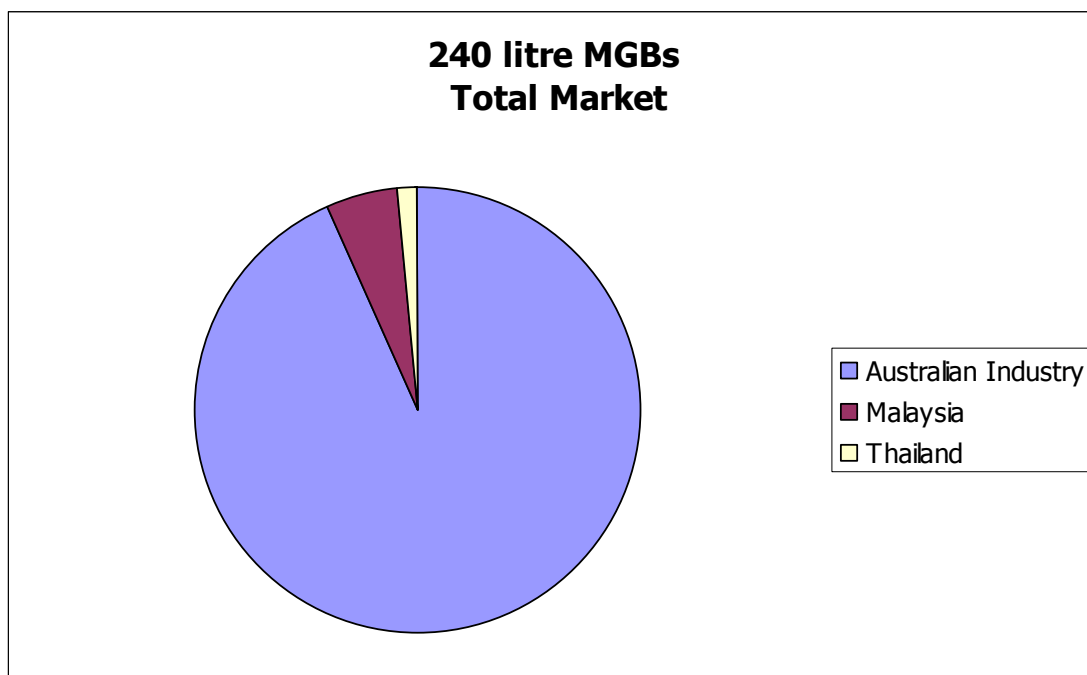
In the investigation period, total imports of 240 litre MGBs from all countries represented approximately 70,000 units. Of these, 12,000 240 litre MGBs were exported from Thailand for the Kalgoorlie contract. Customs also identified a small volume of 240 litre MGBs exported from Thailand to the East-coast of Australia during this time.

6.5 MARKET SIZE AND SHARE

Customs has used data from its import database and information provided by the Australian manufacturers of 240 litre MGBs to measure the Australian market during the investigation period. Sales by Brickwood and OSGS, although not verified, have been included in the market analysis.

Customs considers the market size for 240 litre MGBs in the investigation period to be approximately 1,000,000 units.

Market share by source for FY06/07 is represented in the following graph:



Customs has been unable to make a meaningful assessment of the market size in earlier years due to inadequacies of the records input to Customs import database. For example, it is common for descriptions of imported MGBs to not specify the size (eg. 240 litre).

6.6 MARKET DEMAND

Customs used information provided by the applicants and other interested parties in assessing market demand. A summary of Customs findings is as follows:

- The Australian market for 240 litre MGBs is mature with total sales declining slightly over the past three years;
- Demand for traditional waste disposal has declined, however, this has been partially offset by an increase in demand for recycling following the growing focus on environmental management and the rising commitment to zero waste;
- The majority of the 240 litre MGB market is consumed by local government authorities (councils), or waste collection companies, in either the new tender or top-up segments of the market;
- General sales (or specific purpose applications such as secure document disposal) represent less than 10% of the total market; and
- Demand for MGBs is largely driven by local government policy and legislation.

7 THE DUMPING INVESTIGATION

7.1 INTRODUCTION

Dumping occurs when the export price of a product is less than the normal value of the same (or similar) product in the domestic market of the country of export.

This section explains the results of Customs investigations into whether 240 litre MGBs were exported from Thailand to Australia at dumped prices in the investigation period.

7.2 SUPPLY CHAIN FOR MGBS EXPORTED FROM THAILAND

In relation to the investigation period, Customs identified one Thai manufacturer, two suppliers, and two importers of the GUC.

Manufacturer

- SriThai

Suppliers

- MEA Environment (MEA)
- Otto

Importers

- Otto
- Ossie

Customs also notes the involvement of Clean Sweep in relation to imports of 240 litre MGBs from Thailand. For reasons outlined below, Customs considers Clean Sweep cannot be defined as an importer of the GUC.

7.3 COOPERATION OF MANUFACTURER, SUPPLIERS AND IMPORTERS

Customs contacted the known manufacturer, suppliers, and importers of the GUC during the investigation period.

Customs sent exporter questionnaires to the manufacturer and to the suppliers of the GUC. SriThai, MEA and Otto did not respond to Customs exporter questionnaires, nor did they make submissions concerning dumping.

Customs sent importer questionnaires to Clean Sweep and Ossie. Ossie responded to the importer questionnaire. Customs visited both Clean Sweep and Ossie and verified import data and financial records.

7.4 IDENTITY OF THE EXPORTER AND IMPORTERS

Customs considers that SriThai is the manufacturer of the 240 litre MGBs that were exported to Australia from Thailand in the investigation period.

Customs examined the commercial documentation, verified during visits to importers, in relation to 240 litre MGBs exported from Thailand to Australia in the investigation period. Customs also considered the terms of the sales and the roles of the parties involved in the transactions. Customs considers that SriThai was a principal in the transaction that is located in the country of export from where the goods were shipped who gave up responsibility by knowingly placing the MGBs in the hands of a carrier for delivery to Australia. Customs also considers that SriThai had beneficial ownership of the exported goods at some point. In these circumstances, and based on the information available, Customs considers that SriThai is the exporter of the 240 litre MGBs to Australia, and that MEA and Otto are intermediaries in the export transactions.

Customs also examined the commercial documentation (including terms) and the roles of the parties in the transactions to determine who were the importers in the transactions. Customs considers that where Ossie was involved, Ossie had beneficial ownership of the MGBs at the time of arrival in Australia. Customs therefore considers Ossie to be an importer of 240 litre MGBs from Thailand during the investigation period.

In relation to exports that involved SriThai, Otto and Clean Sweep however, Customs found that Otto was the beneficial owner of the MGBs at the time of arrival in Australia. Customs therefore considers Otto to be an importer of 240 litre MGBs from Thailand during the investigation period.

7.5 EXPORT PRICE

7.5.1 SriThai exports to Otto

Customs considers the 240 litre MGBs exported by SriThai to Otto were exported to Australia other than by the importer, and were purchased by the importer from the exporter. However, Customs is satisfied that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under s. 269TAB(1)(a) or (b). Customs is not aware of all the circumstances of the exportation and therefore cannot establish export price under s. 269TAB(1)(c).

Customs considers that the export price for SriThai exports of 240 litre MGBs to Otto should be established under s. 269TAB(3). This section applies where the Minister is satisfied that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under the preceding subsections, and states that the export price

of those goods shall be such amount as is determined by the Minister having regard to all relevant information.

7.5.2 SriThai exports to Ossie

Customs considers the 240 litre MGBs exported by SriThai to Ossie were exported to Australia other than by the importer, but were not purchased by the importer from the exporter. Therefore, the export price cannot be ascertained under s. 269TAB(1)(a) or (b). Customs is not aware of all the circumstances of the exportation and therefore cannot establish export price under s. 269TAB(1)(c).

Customs considers that the export price for SriThai exports of 240 litre MGBs to Ossie should be established under s. 269TAB(3).

7.5.3 Conclusion – export price

After having regard to all relevant information, Customs calculated the weighted average export price from the relevant first arms-length sale prices in Australia less deductions to the free-on-board (FOB) selling point. Customs used data provided at visits to Ossie and Clean Sweep for deductions to the point of sale by the supplier. Customs also deducted an amount for the supplier's margin to arrive at an FOB export price for the exporter. An amount for supplier's margin from a separate and recent investigation involving Malaysia was used for this purpose.

Customs export price calculations are at **Confidential Appendix 1**.

7.6 NORMAL VALUE

Neither SriThai, MEA, nor Otto provided responses to exporter questionnaires nor made submissions to the investigation regarding dumping.

Section 269TAC(6) of the Act provides that:

Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the preceding subsections (other than subsection (5D)), the normal value of those goods is such amount as is determined by the Minister having regard to all relevant information.

In determining normal values, Customs examined:

- Constructed normal values contained in the application;
- 240 litre MGB cost information verified during TM108; and
- Cost information provided during TM127.

Customs also examined South-East Asian HDPE prices applicable to the investigation period that were obtained from an industry journal. This data showed HDPE prices that were consistent with those used by the applicants in the constructed normal value provided in the application.

The applicants constructed a selling price for 240 litre MGBs sold in Thailand in the 12 months to 30 June 2007. The selling price was based upon cost to make and sell (CTMS) data using published HDPE prices in late 2006, and the applicants' raw material usage and conversion costs. The applicants calculated normal values at an ex-factory level and included no profit. Customs has reviewed the applicants' assumptions and tested the veracity of its CTMS model. In particular, Customs:

- compared the information provided by the applicants to information obtained from external sources; and
- reviewed information provided to Customs and verified during previous investigations.

After having regard to all relevant information, Customs calculated normal values on the basis of the constructed normal values submitted by the applicants in the application. However, Customs has made an upward adjustment to ensure the constructed normal value at ex-factory terms can be properly compared with export prices at FOB. Ex-factory to FOB charges from a separate and recent investigation involving Malaysia were used for this purpose.

Customs normal value calculations are at **Confidential Appendix 2**.

7.7 DUMPING MARGIN

Customs calculated a dumping margin for the investigation period by comparing the constructed normal value with a weighted-average export price for exports by SriThai. The dumping margin is 13%.

Customs dumping margin calculations are at **Confidential Appendix 3**.

8 ECONOMIC CONDITION OF THE INDUSTRY

8.1 INTRODUCTION

This section reports on the economic condition of the industry and facts related to whether the Australian MGB industry has experienced injury.

The applicants claimed that injury resulting from allegedly dumped imports exported from Thailand commenced in FY06/07. Customs examined data from 1 July 2004 in order to assess this claim.

Section 269TAE of the Act provides a non-exhaustive list of factors to which the Minister may have regard in assessing material injury.

8.2 APPLICANTS' CLAIMS

The applicants' claims that the allegedly dumped exports from Thailand have caused material injury in the form of:

- lost sales volume;
- lost market share;
- price undercutting;
- price suppression;
- negative profits and profitability;
- underutilisation of capacity;
- increased inventory levels;
- inadequate return on investment;
- reduced employment levels; and
- reduced revenue.

8.3 GENERAL APPROACH TO INJURY ANALYSIS

Customs conducted on-site visits to all applicants to verify financial and other data supplied for the investigation.

Customs verified production and sales data for the applicants. Based on the information provided, Customs is satisfied that the applicants (Sulo, Mastec and Nylex), represents more than 90% of the 240 litre MGB production in Australia. Customs considers an assessment of the economic condition of the Australian industry for 240 litre MGBs based on these three producers is representative of the whole Australian industry for 240 litre MGBs.

The charts in this section represent the aggregated data of the three applicants. Notwithstanding the finding that bin bodies are like goods to the GUC, sales of bin bodies by the Australian MGB industry are not included in Customs injury analysis because those sales were in negligible volumes.

8.4 PRICE EFFECTS

8.4.1 Price undercutting

Price undercutting occurs when imported product is sold at a price below that of the Australian manufactured product. Price undercutting is not, in itself, conclusive proof of injury caused by dumping. Any claimed injury caused by price undercutting is generally evident through volume and profit indicators.

Customs tests price undercutting by comparing selling prices in the Australian market, ensuring (where possible) that like is compared with like in terms of products, timing, geographic location, terms and conditions. In the case of 240 litre MGBs, Customs has compared prices tendered for selected MGB contracts.

Customs notes the applicants' claims of price undercutting centred around the contract for supply of 240 litre MGBs to the Kalgoorlie Council in WA. To gain greater understanding of the context of the tender prices bid for the Kalgoorlie contract, Customs requested specific tender information from interested parties in relation to selected tenders over the period February 2006 to December 2007. The beginning of this period was chosen because it represents the time when anti-dumping measures were imposed in relation to MGBs from Malaysia, and the end allowed for six months in addition to the investigation period. In selecting the tenders upon which to collect further information, Customs considered the following criteria:

- tenders in different states;
- tenders before, around, and after, the Kalgoorlie tender;
- different sized tenders;
- tenders in which the importers participated; and
- tenders where there was no import competition.

Information was requested from 14 councils and subsequently two local government procurement agencies and two waste management companies. Information was provided by five councils, and two local government procurement agencies. Neither waste management company provided information. Two additional councils provided information during site visits: Joondalup and Kalgoorlie.

Information was requested from the applicants for tender submissions to eight tenders. Customs received information from the applicants for two Mastec tenders and several Nylex tenders.

The information collected in relation to the selected tenders allowed Customs to formulate a comprehensive picture of all bids (whether successful or unsuccessful) for 11 tenders that were awarded in the period between February 2006 and December 2007. Where this information related directly

to the sale of imported 240 litre MGBs from Thailand, Customs confirmed it was consistent with verified data gathered from the importers.

Customs estimates that the 240 litre MGB volumes associated with the 11 tenders examined in depth represent approximately 16% of all tenders for 240 litre MGBs between February 2006 and December 2007. Customs is satisfied the analysis conducted on this coverage of tender activity provides a reasonable basis for examination of matters relevant to injury, and threat of injury.

After examining this information for the investigation period, Customs is satisfied that the selling prices of 240 litre MGBs exported from Thailand undercut the selling prices of the Australian MGB industry in relation to the tender for supply of 240 litre MGBs at Kalgoorlie.

Customs considers, however, that the successful tender price for Thai MGBs at Kalgoorlie, was not unusually low in the context of earlier tender bid prices. Customs considers this to be the case even though the earlier tender bid prices of the Australian industry would be, in part, explained by the fact that HDPE prices were lower at the time of the earlier contracts, and that the earlier contracts did not relate to WA.

Customs did not identify any price undercutting by Thai 240 litre MGBs other than in relation to the Kalgoorlie contract.

Customs assessment of price undercutting is contained in **Confidential Appendix 4**.

8.4.2 Price depression

Price depression occurs when the industry's prices, for whatever reason, fall.

The applicants did not claim injury in the form of price depression.

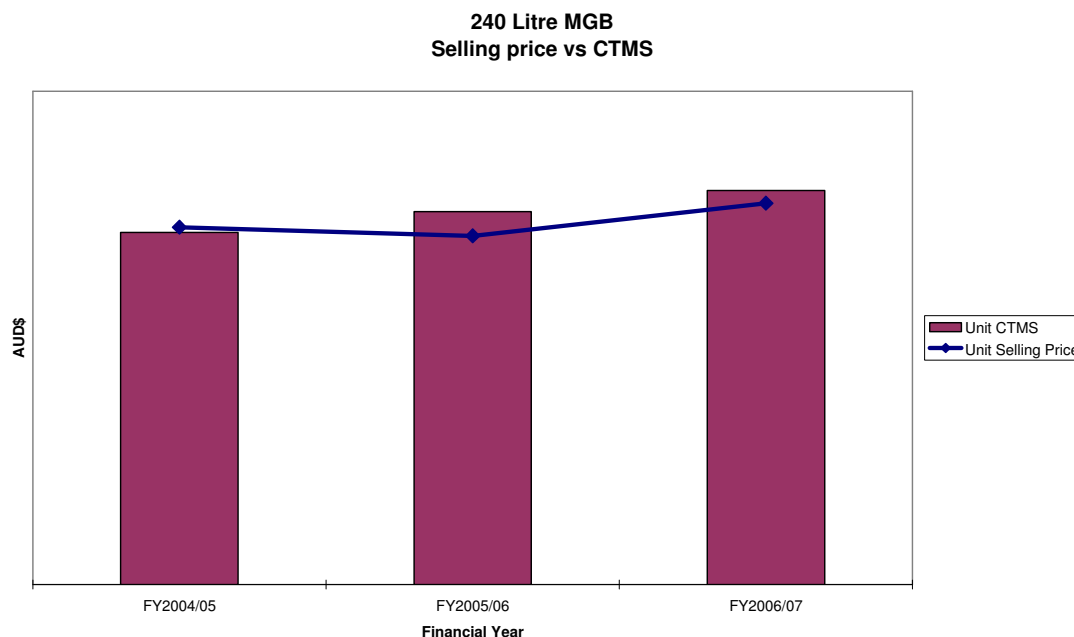
Customs observed that the applicants' weighted average unit selling prices (in relation to all domestic sales to all market segments) decreased from FY04/05 to FY05/06, and then increased in FY06/07.

In relation to the more specific examination of selected tender bid prices between February 2006 and December 2007, Customs noted that the applicants' tender bid prices increased from February 2006 to the time of the Kalgoorlie contract, then declined temporarily. The tender bid prices then trended steadily upwards from around March 2007 to late 2007. These trends are also evident when examining the successful tender bid prices only.

8.4.3 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 following chart shows the relative movements of average unit prices and costs over the period FY04/05 to FY06/07.



The applicants' weighted average unit selling prices and CTMS in relation to all domestic sales for all market segments) increased over the period FY04/05 to FY06/07.

In relation to the more specific examination of tender bid prices between February 2006 and December 2007, Customs notes the prices tendered by the Australian industry in the contracts leading up to, and including, the Kalgoorlie contract increased at a rate considerably faster than the increase in HDPE prices for the corresponding period. The successful tender bid prices, when considered in isolation, also followed this trend.

Customs analysis also showed that after the Kalgoorlie contract, tender bid prices of the Australian MGB manufacturers declined for a short period, at a time when HDPE prices also declined. Their prices then increased steadily from March 2007 to late 2007 at a rate approximating the increases in HDPE prices. The successful tender bid prices, when considered in isolation, also followed this trend.

8.4.4 Conclusion – price injury

Customs observed evidence of price undercutting in relation to one contract for 12,000 MGBs, whereby the price of the 240 litre MGBs from Thailand was lower than the price of the Australian MGB manufacturers.

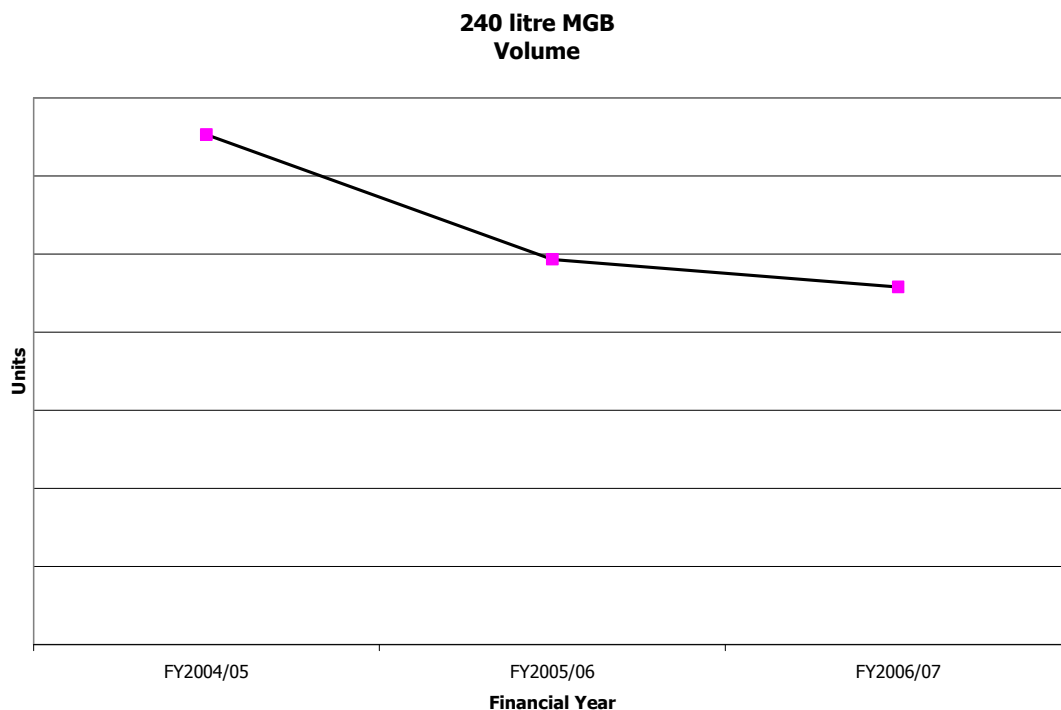
Customs notes the weighted average unit selling price of the applicants increased over the injury analysis period. Customs observed that tender bid prices at selected tenders, although fluctuating, increased over the period from February 2006 to late 2007. Customs considers there is no evidence of price depression.

Customs observed that the applicants' average unit CTMS and its average unit selling prices increased marginally over the injury analysis period. However, the unit CTMS increased at a greater rate than unit price. In relation to the selected tenders, Customs observed that there was some correlation between tender bid prices and HDPE costs, although in the several months leading up to the Kalgoorlie contract, these prices increased more rapidly than HDPE costs. Customs found the applicants' tender bid prices declined temporarily after Kalgoorlie, but this coincided with a time of lower HDPE costs. In the months after the Kalgoorlie contract the tender bid price increases appeared to be more closely aligned to increases in HDPE costs. Customs considers its analysis supports the claim of price suppression.

8.5 VOLUME EFFECTS

8.5.1 Sales volume

The applicants' overall annual sales volumes decreased in the period FY04/05 to FY06/07 as shown in the following chart.



The Kalgoorlie contract was for 12,000 240 litre MGBs, which was supplied by MGBs from Thailand. Had this contract been supplied by a member of the Australian MGB industry, then the sales volume for the Australian MGB industry for FY06/07 would have been higher than that actually achieved in that year, but the result would not have exceeded the volume sold in FY05/06.

8.5.2 Market share

The applicants claimed it lost market share to dumped imports from Thailand in FY06/07.

Customs examined the import data for the period October 2005 to June 2007. No imports of the GUC were identified prior to the investigation period. Market shares for FY06/07 are at section 6.5 of this report.

Had the Australian MGB industry secured the contract for supply of 12,000 MGBs at Kalgoorlie the market share for the Australian MGB industry for FY06/07 would have improved.

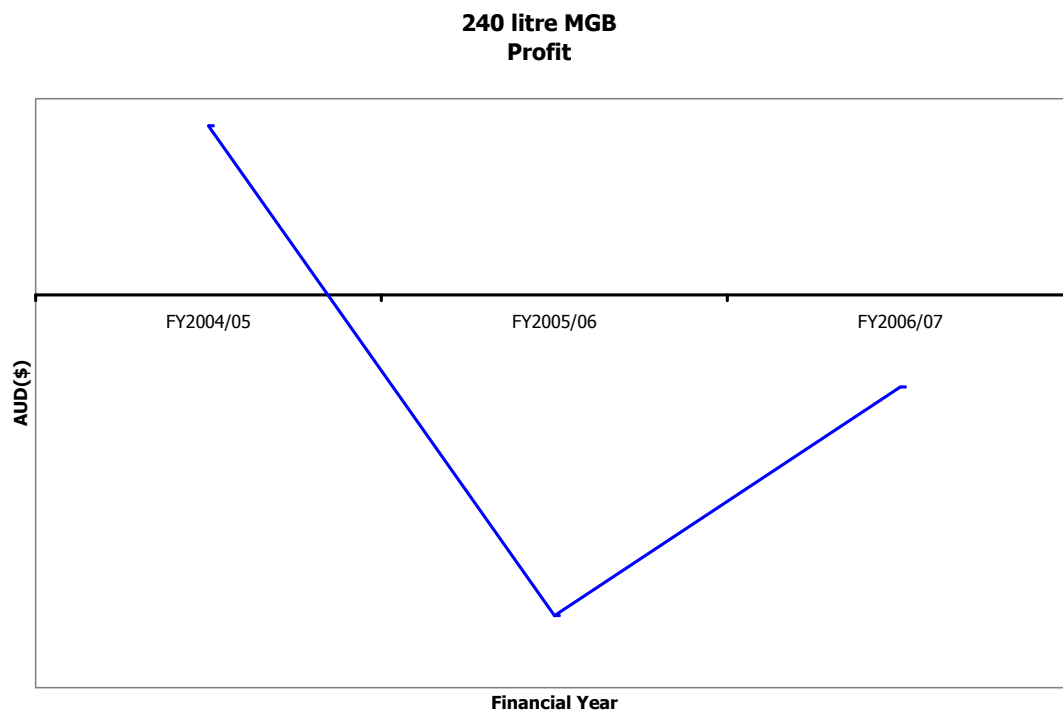
8.5.3 Conclusion – volume injury

Customs notes that the applicants' total annual sales volumes decreased over the injury analysis period. Customs considers it is possible that the Australian MGB industry could have secured additional sales volume of 12,000 240 litre MGBs in FY06/07 at Kalgoorlie. Customs considers the applicants have lost sales volume and lost market share.

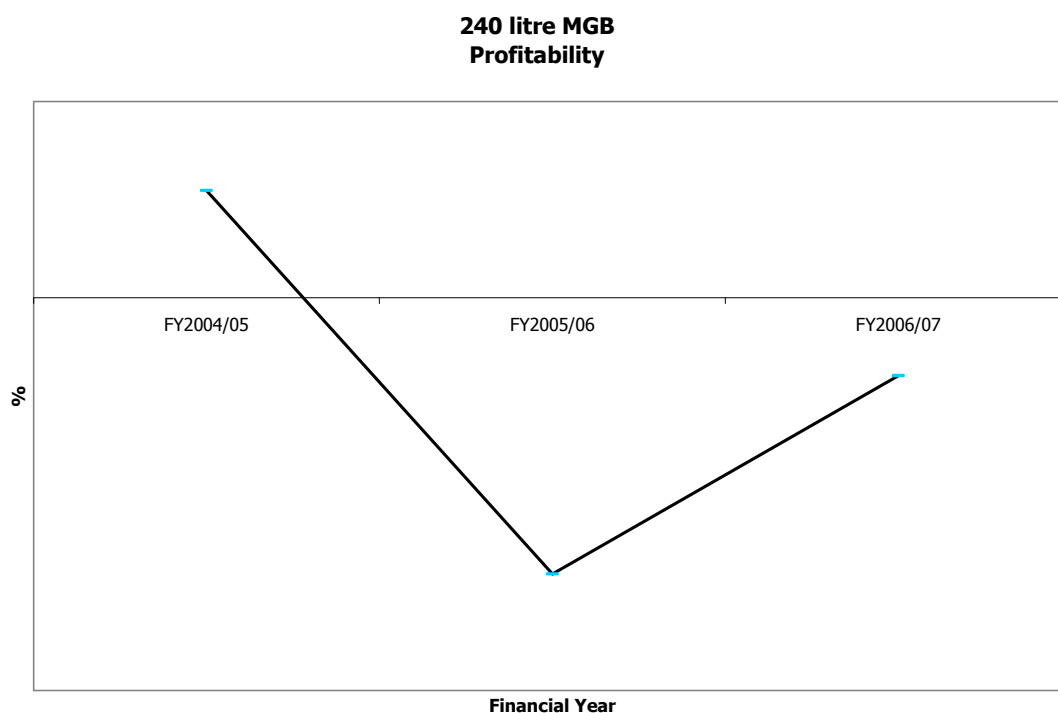
8.6 PROFIT AND PROFITABILITY

The applicants claim that sales lost to dumped imports from Thailand have translated into higher unit costs and price suppression. The applicants also claimed that the resulting price suppression impacted on their profit and profitability. Customs assessed the applicants' claims in relation to profit and profitability. The results are illustrated in the charts below.

Profit



Profitability



It is possible that the applicants' profit and profitability results could have improved had it secured the Kalgoorlie contract. However, having regard to the prevailing market prices at that time, and the relationship between the applicants' prices and CTMS, Customs considers the profit associated with the Kalgoorlie contract would be immaterial in the context of the overall performance of the Australian MGB industry.

8.6.1 Conclusion - profit and profitability injury

Both profit and profitability decreased from FY04/05 to FY05/06, and then increased in the period FY05/06 to FY06/07. Customs considers the Australian MGB industry has experienced negative profits and profitability.

8.7 OTHER INJURY FACTORS

8.7.1 Underutilisation of capacity

The applicants claimed capacity utilisation was reduced in FY06/07 in comparison to FY05/06.

Customs examined the applicants' claim and found that:

- separately, in recent years, each one of the applicants had made large capital investments in manufacturing equipment (presses, moulds etc) with the expectation of higher production volumes;

- each of the applicants were operating at less than full capacity in the period FY04/05 to FY06/07; and
- all three applicants operate “switch plants”, ie they have the ability to manufacture goods other than the GUC using the same plant and equipment.

8.7.2 Increased inventory levels

The applicants claimed that stock inventories increased in FY06/07.

Customs examined the inventory information for the applicants and found that inventory levels fell slightly in FY06/07 when compared with FY05/06.

8.7.3 Inadequate return on investment

The applicants claimed that they had experienced inadequate returns on investment during FY06/07.

Customs considers the evidence presented by the applicants was insufficient for drawing conclusions on whether the Australian MGB industry had experienced inadequate returns on investment.

8.7.4 Reduced employment levels

The applicants claimed that overall employment levels were reduced in FY06/07.

Customs assessed the applicants' information and observed overall employment in FY06/07 had reduced in comparison to FY05/06.

8.7.5 Reduced revenue

One of the applicants claimed that its revenues had reduced in the FY04/05 to FY06/07.

Customs examined the applicants' information and observed that the aggregated revenue of the applicants declined from FY04/05 to FY05/06, then remained relatively stable in FY06/07.

8.7.6 Other factors

The applicants did not claim injury, nor present information in support of any reduction in: asset value, capital investment, research and development, productivity, cash flow or wages. Customs considers the financial and other data provided by the applicants was insufficient to draw conclusions on whether the Australian MGB industry had experienced any injury in relation to these factors.

8.8 CONCLUSION – ECONOMIC CONDITION OF THE INDUSTRY

In terms of price, volume, and profit indicators, Customs considers that the Australian MGB industry has experienced injury in the forms of:

- price undercutting;
- price suppression;
- lost sales volume;
- lost market share; and
- negative profits and profitability.

Customs assessment of price, volume and profit indicators is at **Confidential Appendix 5**.

9 HAS DUMPING CAUSED MATERIAL INJURY?

This section considers whether dumping has caused material injury to the Australian industry.

9.1 DUMPED IMPORTS

The applicants claimed that approximately half of the 60,000 240 litre MGBs imported into WA to supply contracts for the Joondalup and Kalgoorlie councils were sourced from Thailand. Imports of the GUC were at allegedly dumped prices.

Customs examined its import database and verified information provided by Clean Sweep. The examination showed that bins supplied for the Joondalup contract were imported from Malaysia and were therefore not the GUC.

The 240 litre MGBs supplied to Kalgoorlie were manufactured by SriThai and supplied by Otto to Clean Sweep. A total of 12,000 units was exported for the Kalgoorlie contract in the investigation period.

In addition, Customs identified a small volume of the GUC imported during the investigation period and delivered to east coast customers. The imports were included in large orders of goods other than the GUC and not sold in response to a tender.

Based on the information available, Customs has calculated a dumping margin for the GUC of 13% (refer to section 7.7 of this report).

9.2 APPLICANTS' CLAIMS

In the application, the applicants stated that it had suffered material injury as a direct result of dumped imports from Thailand. The applicants claimed that:

- Dumped imports have been affecting selling prices in the Australian market since 2004;
- Despite the imposition of measures in 2006 on exports of MGBs from Malaysia, the applicants have not returned to profitability since 2004;
- In 2006, two WA local Councils, Joondalup and Kalgoorlie, awarded contracts to supply MGBs to an importer of Malaysian and Thai 240 litre MGBs;
- One importer, Ossie, was successful in the WA tenders by undercutting three Australian manufacturers by 20-28%;

- Ossie Plastics is importing MGBs from Thailand at dumped prices that are both less than the manufacturer's full cost recovery and the applicants' cost to produce and deliver; and
- Future tender prices for other local councils may be affected by the winning tenderer's low dumped prices.

In relation to the effect on industry performance, the applicants claimed that the loss of these tenders has caused:

Volume injury

- lost sales leading to a reduction in volume and market share;
- decreased capacity utilisation; and
- increased unit costs.

Price injury

- price suppression resulting from reduced volumes and increases in raw material costs resulting in reduced profits and profitability; and
- reduced selling prices for future contracts.

Customs established that the tenders for the Joondalup and Kalgoorlie Councils were won by Clean Sweep, not Ossie. Customs also established that 240 litre MGBs from Thailand were supplied for the Kalgoorlie contract, and 240 litre MGBs from Malaysia were supplied at Joondalup.

9.3 SRITHAI AND OTTO CLAIMS

SriThai and Otto made several submissions relating to material injury and causal link. The key issues raised in the submissions are:

- Imports of the GUC from Thailand do not hold a sufficient share of the Australian market to cause injury which is not immaterial, insubstantial or insignificant;
- The applicants have not demonstrated that the injury experienced by the Australian industry during the investigation period because of imports of the GUC was not negligible and was material;
- The Australian industry did not suffer a substantial or significant diminution of profit in FY06/07; and
- The Australian industry's performance improved from FY05/06 to FY06/07.

9.4 CUSTOMS ASSESSMENT

9.4.1 Price effects

Customs examination of specific tenders between February 2006 and December 2007 indicated that prices of the 240 litre MGBs from Thailand

undercut the prices of the Australian industry in relation to the contract for supply of 12,000 MGB's at Kalgoorlie.

Customs considers that the magnitude of dumping has allowed the imported 240 litre MGBs to be more competitive than if they were not at dumped prices. However, Customs considers that the successful tender price for the Thai MGBs at Kalgoorlie was not unusually low when taking into account earlier tender price bids, the price of HDPE, and the geographic location for MGB delivery.

While Customs noted a temporary fall in tender bid prices from the Australian MGB industry shortly after the Kalgoorlie contract, this coincided with a downward movement in HDPE prices and was followed by a period of steady increases in tender bid prices for later contracts. Based on these findings, Customs considers the 240 litre MGBs imported from Thailand have not caused price depression for the Australian MGB industry.

The applicants claimed that the importer's winning tender bid price for Kalgoorlie influenced tender prices in the broader Australian market. The applicants submit that the contract for supply of 240 litre MGBs at Wanneroo supports its claim. However, Customs does not agree. Having regard to the relative prices tendered by the Australia MGB manufacturers in relation to other contracts (in WA and other markets), and to the movements in HDPE costs, Customs considers the successful tender price at Wanneroo by one of the applicants was not unusually low.

Customs has examined the competitive prices of Australian industry members in tenders where no import competition was involved, both before and after Kalgoorlie. Customs considers this analysis provides evidence of strong price competition between Australian MGB manufacturers, whether or not imports are involved.

Customs considers that the 240 litre MGBs exported from Thailand at dumped prices have not caused price suppression for the Australian MGB industry.

9.4.2 Volume effects

Customs has measured the volume of dumped 240 litre MGBs from Thailand as a percentage of the total import volume during the investigation period and found that it exceeds 3%. The volume of dumped 240 litre MGBs from Thailand is therefore not negligible.

Customs notes that the applicants' total annual sales volume of 240 litre MGBs has decreased over the injury analysis period, and this is commensurate with the decrease in the 240 litre MGB market size for the corresponding periods.

Customs observed that the volume of dumped 240 litre MGBs from Thailand represented approximately 1% of the Australian 240 litre MGB market in the investigation period.

It is possible that the Australian MGB industry may have secured additional sales of 240 litre MGBs in the absence of dumped MGBs from Thailand, but this is not certain. This is because the suppliers of 240 litre MGBs appeared to have access to MGBs manufactured in, and exported from, Malaysia. Customs notes that in relation to the MGB contract for Joondalup, the suppliers ultimately provided 240 litre MGBs from Malaysia although previously advising the customer that it could source from Thailand or Malaysia. This suggests to Customs that even in the absence of Thai MGBs at dumped prices the Kalgoorlie contract may have been secured by imports from an alternative source.

Customs also considered the contention that reduced sales volumes had an adverse impact on unit costs and therefore profitability. Customs considers that had the volume of Thai 240 litre MGBs sales in Australia during the investigation period been replaced by sales of one or more of the Australian manufacturers this would have had a very small impact upon the manufacturing costs and profits of that manufacturer and an even smaller impact upon those factors for the industry as a whole.

Having regard to the above, Customs considers that even if the dumped 240 litre MGBs from Thailand caused some volume injury in terms of lost sales volume and lost market share, that injury is immaterial.

9.4.3 Profit and Profitability

Customs considers the dumped 240 litre MGBs from Thailand have not resulted in any price depression or price suppression for the Australian MGB industry. Customs also considers that any volume injury experienced by the Australian industry that is attributable to the dumped 240 litre MGBs from Thailand has been immaterial. In these circumstances, it is logical that Customs also finds that the Australian MGB industry has not experienced any material diminution of profits, or profitability, as a result of the dumped 240 litre MGBs from Thailand.

The applicants may consider they lost profits associated with the Kalgoorlie contract. Customs cannot accept this claim because it is possible the Kalgoorlie contract would have been awarded to alternative imports of 240 litre MGBs. Further, it is possible that, given the context of prevailing market prices and verified CTMS, this additional sale would have generated little, if any, extra profit for the Australian MGB industry.

9.5 OTHER POSSIBLE CAUSES OF INJURY

This section discusses factors other than dumping that may have caused injury to the Australian MGB industry.

9.5.1 HDPE

There is only one Australian manufacturer of HDPE, Qenos Pty Ltd. Anti-dumping duties apply to imports of HDPE from the Republic of Korea, Malaysia, the Republic of Singapore, and Sweden.

A major consideration for applicants in preparing tender bids is the cost of HDPE.

Since 2004, the price of HDPE in the South-East Asian region has been trending upwards. HDPE prices increased by approximately 15% in the period January 2006 to December 2006.

Tender bids by the applicants appeared to be influenced by increases in the cost of HDPE during 2006 and 2007.

9.5.2 Overcapacity

Customs examined the production processes and measured the production capacity for each of the applicants.

Customs observed that each manufacturer had made large capital investments in the equipment (presses, moulds) used in the production of MGBs. Typically, the equipment is expected to be used, and depreciated, over a 20-year period.

The capital investments made by each company anticipated that overall market demand, and each company's share of the market, would be maintained or increase in the longer term.

Customs notes that based on output of 240 litre MGBs in the investigation period, the applicants were operating significantly below practical production capacity.

9.5.3 Competition among Australian industry members

The Australian market for 240 litre MGBs is mature with the market decreasing in size since FY04/05. Local supply is primarily by one of the three larger Australian MGB manufacturers. Given these manufacturers are producing 240 litre MGBs at rates well below practical capacity, and each tends to be competing for most major supply contracts, the Australian manufacturers' pricing appears to be highly competitive.

As part of its undercutting analysis, Customs observed competitive pricing amongst the applicants in the tender market. This was observed in tenders prior to, during, and after, the investigation period and it was observed in tenders with and without import competition. Customs also observed that the price leader among the applicants involved in these tenders was often bidding at prices lower than its CTMS.

9.5.4 Transport Costs

Interested parties noted increasing transport costs, in particular fuel levies, impacting on profitability in FY06/07.

Customs examined the cost of freight in the domestic market and observed increases in the cost of domestic freight in the investigation period. Customs

also observed relatively high freight costs for east-coast-based Australian manufacturers transporting goods to WA.

Customs notes that exporters from South-East Asia have some competitive advantage for shipping costs to WA when compared with the domestic freight costs incurred by the applicants.

9.5.5 Imports from other countries

Customs examined export prices for the GUC from Thailand and for imports of 240 litre MGBs from Malaysia during the investigation period. Imports of 240 litre MGBs from Malaysia have been subject to anti-dumping measures since February 2006.

Export prices for the GUC were at, or above, the export prices for comparable goods exported from Malaysia.

A comparative analysis has been undertaken and forms **Confidential Appendix 6**.

9.6 CONCLUSION

Customs has established that exports of 240 litre MGBs from Thailand at dumped prices have undercut the Australian industry prices in the Australian market, but this related to one contract for supply of 12,000 MGBs.

Customs considers that the 240 litre MGBs exported from Thailand at dumped prices have not resulted in price depression or price suppression for the Australian MGB industry. Customs also considers that even if the imported 240 litre MGBs from Thailand have caused some volume injury in terms of lost sales volume and lost market share, it is immaterial. The combination of these findings provides the basis for Customs also concluding that the 240 litre MGBs exported from Thailand at dumped prices have not caused a material diminution of profits or profitability.

It is Customs view that other factors, particularly the price competition among Australian manufacturers during a period of rising raw material costs, have caused injury to the Australian MGB industry.

Customs considers that the 240 litre MGBs exported from Thailand during the investigation period have been at dumped prices, but the injury experienced by the Australian industry for 240 litre MGBs, that has been, or may be, caused by that dumping is negligible.

10 THREAT OF MATERIAL INJURY

Threat of material injury arises in circumstances where the dumping is causing either no present injury, or is causing negligible present injury, but there is a future threat of material injury.

The WTO Agreement and the Australian legislation provide for a determination of threat of material injury to be subject to stringent tests.

Article 3.7 of the WTO Anti-Dumping Agreement provides that a determination of a threat of material injury must be based on facts and not merely on allegation, conjecture or remote possibility. It also provides a non-exhaustive list of factors that should be considered and notes that no one factor can necessarily give decisive guidance. A totality of factors must lead to a determination of threat of material injury.

Article 3.8 of the WTO Anti-Dumping Agreement provides that:

With respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be considered and decided with special care.

The Australian legislation, at s. 269TAE(2B), provides that in determining whether or not material injury is threatened to an Australian industry:

*...the Minister must take account of only such **change in circumstances**, including changes of a kind determined by the Minister, as would **make that injury foreseeable and imminent unless dumping or countervailing measures were imposed**" (emphasis added).*

In assessing the threat of injury Customs considered, *inter alia*, factors such as:

- a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
- sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped/subsidised exports to the market, taking into account the availability of any other export markets to absorb any additional exports;
- whether imports are entering at prices that will have a significant depressing or suppressing affect on domestic prices, and would likely increase demand for further imports; and

- whether inventories of the product being investigated have increased.

10.1 APPLICANTS' CLAIMS

In the application, the applicants claimed:

- Following the imposition of measures on MGBs exported from Malaysia in June 2006, importers have sourced MGBs from Thailand to avoid paying dumping duties;
- The MGBs made in Thailand do not fully recover the cost of production;
- The bid prices of Thai product are undercutting the market prices by a significant margin;
- The price at which Thai bids are being supplied is less than the Australian industry's cost to produce and deliver at future tender contracts;
- The presence of dumped imports from Thailand is depressing the Australian MGB market; and
- Further material injury resulting from dumped imports from Thailand is likely to occur at future Council tenders and this injury is considered "foreseeable and imminent".

10.2 CUSTOMS ASSESSMENT AT INITIATION

In Initiation Report TM130, Customs made the following observation:

As the application does not rely solely on threat of material injury, and we consider the applicant has provided reasonable grounds in alleging that MGBs exported to Australia from Thailand at dumped prices has caused material injury to the Australian industry producing like goods, it is not appropriate to address threat of material injury at this stage.

10.3 INVITATION TO COMMENT TO INTERESTED PARTIES

After the investigation had been initiated, Customs developed an increasingly clearer understanding of the origin of imported MGBs that were sold to Kalgoorlie and Joondalup Councils. Information submitted to Customs for this investigation, and information obtained from Customs inquiries, suggested that, contrary to the applicants' claims, the Joondalup Council was not supplied with MGBs from Thailand. Customs indicated to the applicants that it needed to consider this development in the context of its material injury and causation assessments.

Customs also advised the applicants that it would need to consider whether the injury, if any, caused by dumping is negligible. As such a finding may

have been possible, Customs requested that the applicants consider further clarification and substantiation of its claims (in the application) in relation to the question of threat of material injury.

After the applicants lodged a submission in response to Customs request, Customs wrote to interested parties and invited submissions on the question of threat of material injury.

Customs received two submissions on the issue: one from the applicants and one on behalf of SriThai and Otto.

10.3.1 Applicants' response

In its submission the applicants claimed that future tenders will continue to be impacted by the threat of supply of imported Thai MGBs. In support of its claim, the applicants raised the following issues;

- The volume of Thai MGBs imported in FY06/07 is above negligible volume levels;
- Exports of Thai MGBs were supplied at dumped prices and did not recover the producer's CTMS;
- Thai MGBs are likely to be supplied for "top-up" contracts;
- The current review of measures applicable to Malaysia is likely to result in higher variable factors, which will shift importer's focus away from Malaysia and on to Thailand as an alternative source of supply;
- Importers can demonstrate that Thai MGBs have been supplied to an Australian council contract;
- The recently announced Wanneroo contract was heavily influenced by the availability of imported Thai MGBs;
- Future tender contracts will be influenced by the Kalgoorlie awarded contract price; and
- The future threat of material injury from MGBs exported from Thailand is foreseeable and imminent (as evidenced at Wanneroo) and is likely to continue in the absence of anti-dumping measures.

10.3.2 SriThai and Otto response

SriThai/Otto stated that the domestic industry did not suffer material injury during the investigation nor was there a foreseen and imminent change in the circumstances prevailing during FY06/07 that would create a situation wherein material injury would occur by reason of further exports from Thailand.

Referring to Article 3.7 of the WTO Anti-Dumping Agreement, SriThai/Otto stated that it cannot be demonstrated that:

- There is a significant rate of increase of imports indicating the likelihood of substantially increased importation from Thailand;
- There is sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to Australia;
- Imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices;
- The inventory of 240 litre MGBs held by the Thai manufacturer and exporter to Australia is such as to indicate likelihood of substantially increased imports; and
- There are any other factors which can lead to the conclusion that further imports from Thailand are imminent and, in the absence of anti-dumping action, material injury would occur.

10.4 TENDERS SINCE THE INVESTIGATION PERIOD

Customs examined information supplied by interested parties relating to tender bids since the end of the investigation period.

Customs examined tender contracts in the six months to 31 December 2007, including the City of Canning, City of Cockburn, and Wanneroo Councils in WA.

Companies that had previously sold imported 240 litre MGBs from Thailand bid on three of these tender contracts and were unsuccessful in all three cases. These companies advised that, if they had been successful with their bids, it is likely they would have obtained the 240 litre MGBs from Thailand or Malaysia, but they could not be specific as to which country.

10.5 IMPORTS SINCE THE INVESTIGATION PERIOD

Customs examined its import database to determine if any 240 litre MGBs had been imported since the end of the investigation period. Customs identified a small volume of 240 litre MGBs exported from Thailand and notes that the imports:

- were part of larger MGB shipments;
- appeared not to be for specific tenders or contracts; and
- were sold into the top-up and retail segments of the market.

Customs also identified a small number of imports of 240 litre MGBs from Malaysia that appeared to be directed at the top-up and retail segment of the market.

10.6 CUSTOMS ASSESSMENT

Customs has established that there has not been a significant rate of increase of MGB imports from Thailand that would indicate a likelihood of substantially increased importation.

Customs has explained in earlier sections of this report that it does not consider the 240 litre MGBs exported from Thailand are sold at prices that have been causing price depression or price suppression.

In the absence of exporter cooperation, Customs is unable to provide a meaningful assessment of the freely disposable capacity of the exporter, nor is Customs able to consider the inventory levels of the exporter.

Customs notes the circumstances surrounding the supply of 240 litre MGBs to the Joondalup Council and considers it provides important indicators relevant to an assessment of the threat of material injury caused by dumped 240 litre MGBs from Thailand.

Customs established that the Joondalup contract for MGB supply was awarded to Clean Sweep, where there had been advance notification that the MGBs “will be manufactured in either Thailand or Malaysia based factories which are owned in a joint venture between Otto and a local company”. One contract price was specified, whether the MGBs were supplied from Thailand or Malaysia.

Customs has established that the Joondalup contract was ultimately supplied with 240 litre MGBs that were all manufactured and exported from Malaysia. This indicates to Customs that the supplier, with equal and ready access to MGBs exported from Thailand and Malaysia, chose for the purposes of the Joondalup contract, to purchase and supply only the MGBs from Malaysia. This was despite the existence of anti-dumping measures in respect of Malaysia (and not Thailand). The supply of 240 litre MGBs for Joondalup was fulfilled before commencement of this investigation.

Customs considers that almost the same considerations exist now for suppliers and purchasers of imported 240 litre MGBs as existed for the supply at Joondalup. However, Customs is aware of one new factor since Joondalup that may have affected the comparative advantage on price between MGBs of Thai and Malaysian origins. That is, after the recent review of anti-dumping measures for MGBs from Malaysia, the variable factors and IDD increased.

Customs acknowledges that, assuming all other things remain equal, the changes to anti-dumping measures applying to MGBs from Malaysia might provide for lower priced MGBs from Thailand relative to MGBs from Malaysia. However, Customs considers the amount of that price difference is not significant and could readily be countered by other differences (eg. cost of freight).

On balance, Customs considers that the suppliers of imported MGBs have no significantly greater incentive now to supply MGBs from Thailand in

preference to MGBs from Malaysia than was the case for Joondalup, where Malaysian MGBs were ultimately supplied.

Customs considers there is no evidence of a change in circumstances that would make material injury imminent and foreseeable.

Customs therefore considers that the 240 litre MGBs exported from Thailand at dumped prices have not threatened material injury to the Australian MGB industry.

11 NON-INJURIOUS PRICE

Dumping duties may be applied where it is established that dumped imports have caused or threaten to cause injury to the Australian industry producing like goods.

The level of dumping duty cannot exceed the margin of dumping, but lesser duty may be applied if it is determined that it is sufficient to remove the injury. A non-injurious price (NIP) is calculated for this purpose.

The NIP provides the mechanism whereby this lesser duty provision is given effect. It is the FOB price that would be sufficient to remove the injury caused to the Australian industry by the dumping. The NIP is defined at s. 269TACA but the method of calculation is not covered in the legislation.

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

Customs preferred approach to establishing USPs observes the following hierarchy:

1. industry selling prices at a time unaffected by dumping;
2. constructed industry prices – industry cost to make and sell plus profit;
3. selling prices of un-dumped imports.

11.1 SUBMISSIONS BY INTERESTED PARTIES

Customs discussed the issue of USP/NIP with interested parties at interview and in subsequent correspondence. The applicants expressed a preference for a USP based on FY03/04 selling prices adjusted for cost increases. No other interested parties expressed a preference for the methodology Customs uses in calculating USP/NIP.

11.2 CUSTOMS APPROACH

Customs considered the following selling price options for deriving a USP:

- The applicants' weight-average selling prices in a period unaffected by dumping (the options here included the use of selling prices in FY03/04 which was used as a basis for USP calculation in TM127, and the possibility of using prices after anti-dumping measures were imposed on Malaysia but before the Kalgoorlie contract);

- Selected tender bids in a period unaffected by dumping;
- Average tender bids in a period unaffected by dumping.

However, USPs based on selling prices were not the preferred methodology in this case as Customs is not confident that the:

- selling prices in FY03/04, even after indexing on some basis to make them contemporaneous, are representative of the Australian market for 240 litre MGBs, which in the investigation period comprised three major Australian manufacturers;
- selected or average tender bids adequately reflect the broader Australian market for 240 litre MGBs, which includes a significant proportion of sales in market segments other than the tender market; and
- market in recent years has been completely free of the influence of dumped products (noting that a Customs reinvestigation and a Customs review have been conducted since the original investigation concerning Malaysia).

In this case, Customs preferred approach is to base the USP on the applicants' CTMS in FY06/07, that is, a constructed USP. Customs has used the weighted average of the applicants' CTMS for this purpose. Customs has not added an amount for profit because of the highly competitive pricing among the Australian MGB industry that was evident in the tender market, which often resulted in little, if any, profit.

The NIP calculation has been based on the constructed USP, less relevant post-FOB charges and margins incurred by the importers and suppliers. This provides for a NIP measured at FOB.

Customs USP and NIP calculations are at **Confidential Appendix 7**.

11.3 COMPARISON OF NIP TO EXPORT PRICE

Customs compared its NIP calculation with the weighted average export price for SriThai and found the figures to be very similar. This result implies that even if the export prices were dumped prices, the lesser duty rule would provide only for a very low level, if any, of IDD (fixed component).

This result also implies that the prices of the 240 litre MGBs exported from Thailand, whether or not dumped, are not causing material injury to the Australian industry. That is, where the NIP exceeds the export price, this differential is sometimes referred to as the injury margin. In this case, there is little, if any, injury margin.

The relationships observed between export price and NIP, and the implications discussed, are entirely consistent with the findings above that 240 litre MGBs exported from Thailand at dumped prices have not caused, nor have they threatened, material injury to the Australian MGB industry.

12 RECOMMENDATION

It is recommended that, based on the above, the delegate of the CEO be satisfied that, in relation to the goods the subject of the application that have been, or may be, exported to Australia from Thailand:

- (i) there has been, or may be, dumping of some or all of the goods the subject of the application; but
- (ii) the injury, if any, to the Australian industry that has been, or may be, caused by dumping is negligible.

If so satisfied, the delegate of the CEO must terminate the investigation in accordance with the terms of subsection 269TDA(13) of the Act by signing the attached instrument.

13 LIST OF APPENDICES

The following appendices are all considered confidential:

| | |
|-------------------|-------------------------------------|
| Appendix 1 | Export price calculations |
| Appendix 2 | Normal value calculations |
| Appendix 3 | Dumping margin calculations |
| Appendix 4 | Price undercutting assessment |
| Appendix 5 | Price, volume and profit indicators |
| Appendix 6 | Relative prices assessment |
| Appendix 7 | USP and NIP calculations |