



Australian Government  
Australian Customs Service

R E P O R T

CUSTOMS ACT 1901 - PART XVB

## TRADE MEASURES REPORT No. 122

### CERTAIN MOBILE GARBAGE BINS FROM MALAYSIA

### REINVESTIGATION OF CERTAIN CUSTOMS FINDINGS

5 March 2007

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## 2 SUMMARY AND FINDINGS

### 2.1 Summary

This report provides the results of the Australian Customs Service (Customs) reinvestigation of certain findings in relation to the alleged dumping of certain mobile garbage bins (MGBs) exported to Australia from Malaysia.

On 5 June 2006, the Minister for Justice and Customs (Minister) published a dumping duty notice imposing measures on MGBs exported to Australia from Malaysia.

The Trade Measures Review Officer (TMRO) accepted applications for a review of the Minister's decision from Nylex Corporation Ltd (Nylex), Sulo MGB Australia Pty Ltd (Sulo), Schaefer Waste Technologies Sdn Bhd (SWT), Schaefer Systems International Pte Ltd (SSI Singapore) and Schaefer Systems International Pty Ltd (SSI Australia).

Following the review, the Minister accepted the recommendations of the TMRO and subsequently wrote to the Chief Executive Officer of Customs (CEO) requiring him to reinvestigate Customs findings that:

- (i) the dumping margin is 6.21 per cent;
- (ii) there is a causal link between dumped imports and injury to the Australian industry and that the injury caused to the Australian industry by dumping is material; and
- (iii) exports in the future from Malaysia are likely to be dumped and material injury to the Australian industry is likely to continue.

The Minister directed Customs to report the results of the reinvestigation to him on or before 5 March 2007.

### 2.2 Findings

Following its reinvestigation, Customs affirms the findings that:

- (i) there is a causal link between the dumped imports and injury to the Australian industry and the injury caused by dumping is material; and
- (ii) exports in the future from Malaysia are likely to be dumped and material injury to the Australian industry is likely to continue.

In relation to the dumping margin, Customs reinvestigation makes a new finding - that the dumping margin is 6.47 per cent.

## 3 BACKGROUND TO THE REINVESTIGATION

### 3.1 Customs original investigation

On 23 September 2005, Nylex and Sulo lodged an application under subsection 269TB(1) of the *Customs Act 1901* (Act)<sup>1</sup> requesting that the Minister publish a dumping duty notice in respect of 120 litre and 240 litre MGBs exported to Australia from Malaysia. Sulo and Nylex are the principal Australian manufacturers of MGBs. The applicants claimed that exports of MGBs from Malaysia were dumped and causing material injury to the Australian industry.

Customs considered the information provided by the Australian industry and decided that there were grounds to initiate an investigation. The investigation, initiated on 31 October 2005, was announced by notice in *The Australian* newspaper and by Australian Customs Dumping Notice (ACDN) 2005/59.

The period of investigation for the purposes of determining the dumping margin was 1 October 2004 to 30 September 2005. The period of examination for determining injury was from July 2002.

On 20 February 2006, Customs placed Statement of Essential Facts (SEF) No. 108 on the public record. Interested parties were given 20 days to respond to the SEF. Customs received submissions from five interested parties in response to the SEF, which it considered in formulating its final recommendations to the Minister.

On 27 February 2006, Customs made a Preliminary Affirmative Determination (PAD) that there appeared to be sufficient grounds for the publication of a dumping duty notice on the goods exported from Malaysia. Securities under section 42 were imposed in respect of any interim dumping duty that may have become payable on exports from Malaysia that were imported on or after 27 February 2006.

On 4 April 2006, Customs reported its findings and recommendations to the Minister. Following the Minister's consideration, a dumping duty notice in respect of certain mobile garbage bins exported from Malaysia was published on 5 June 2006.

### 3.2 Review of a Ministerial decision

Division 9 provides for reviews by the TMRO of certain decisions by the Minister, including decisions to take, or not to take, anti-dumping action under subsections 269TG(1) and 269TG(2). Reviews are conducted only on applications from relevant interested parties as defined in section 269ZX.

An interested party includes a person directly concerned with the exportation or importation of the goods to which the measures relate; a person representing all or part of the Australian industry producing like goods; or the government of a country from which like goods have been exported to Australia.

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<sup>1</sup> A reference to a division, section or subsection in this Report is a reference to a provision of the Act, unless otherwise specified.

### 3.3 TMRO Review

The TMRO received two applications for review. One application was made on behalf of Nylex and Sulo. An application was also made on behalf of SWT, SSI Singapore and SSI Australia (collectively, Schaefer). The applicants made submissions to Customs in the course of its original investigation and are considered to be interested parties, within the meaning of the Act.

In making his findings to the Minister, and in accordance with section 269ZZK, the TMRO must only have regard to the relevant information. Therefore, the TMRO had regard to all of the information available to Customs during the course of its investigation, to Customs analysis, findings and recommendations as contained in its final report to the Minister and to the submissions provided by the applicants for review on this matter.

Following the review, the TMRO, in his report to the Minister, recommended that the Minister direct the CEO to reinvestigate findings that:

- (i) the dumping margin is 6.21 per cent;
- (ii) there is a causal link between dumped imports and injury to the Australian industry and that the injury caused to the Australian industry by dumping is material; and
- (iii) exports in the future from Malaysia are likely to be dumped and material injury to the Australian industry is likely to continue.

On 4 December 2006, the Minister accepted the TMRO's recommendations and directed Customs to reinvestigate the above findings and report to him on or before 5 March 2007.

### 3.4 Reinvestigation process

In accordance with section 269ZZL, the TMRO published a notice advising of the reinvestigation in *The Australian Financial Review* on 22 December 2006. ACDN 2007/02, dated 22 December 2006 also notified details of the reinvestigation.

The reinvestigation by Customs is subject to section 269ZZL that requires the CEO, in making a further investigation of the findings, to have regard only to the information and conclusions to which the TMRO was permitted to have regard.

As noted above, this included all of the information available to Customs during the course of its original investigation, Customs analysis, findings and recommendations to the Minister as contained in Trade Measures Report No. 108 and the submissions provided by the applicants for review on this matter.

Customs contacted interested parties and offered them the opportunity to make submissions to the reinvestigation and advised that it would consider previous

submissions, including those made to the TMRO, so far as they related to the relevant information.

Customs advised interested parties that if they wished to lodge a submission to the reinvestigation they should be aware of the limitations on the information to which Customs could have regard.

### **3.5 The Goods**

The goods the subject of this reinvestigation, are:

*Mobile Garbage Bins (MGBs), whether exported assembled or unassembled, of 120 litre and 240 litre nominal capacities, 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 cases a bin divider.*

*MGBs in other nominal sizes (e.g. 80 litre, 140 litre and 360 litre) are excluded from the investigation.*

The goods are classified to subheading 3924.90.00, statistical code 09, in Schedule 3 to the *Customs Tariff Act 1995*. The applicable duty rate for goods the produce or manufacture of Malaysia classified to subheading 3924.90.00 is 5%.

## 4 ISSUE 1 – DUMPING MARGIN

The Minister has directed Customs to reinvestigate the finding that the dumping margin of MGBs exported from Malaysia is 6.21 per cent.

### 4.1 Original investigation

#### 4.1.1 Exporter and importers

Customs original investigation concluded that SSI Singapore was the exporter. In the case of export sales to SSI Australia, Customs original investigation concluded that SSI Australia was the importer, and that in the case of export sales to Waste Equipment Sales N.S.W. Pty Limited (WES), that WES was the importer.

#### 4.1.2 Export prices

In the case of SSI Singapore sales to WES, Customs original investigation concluded that these were arms length transactions in terms of section 269TAA. However, in relation to SSI Singapore sales to SSI Australia, Customs original investigation concluded these were not arms length transactions in terms of section 269TAA.

Customs original investigation established the export price for export sales to WES under subsection 269TAB(1)(a), and for export sales to SSI Australia under subsection 269TAB(1)(b).

#### 4.1.3 Normal values

Customs original investigation established normal values for 120 litre MGBs under subsection 269TAC(1), using the weighted average prices paid for like goods sold in the ordinary course of trade in sales that were arms length transactions by an other seller, namely SWT.

In relation to 240 litre MGBs, Customs original investigation established normal values under subsection 269TAC(2)(c), using the cost of production or manufacture of the exported goods and the administrative, selling and general costs, and profit (where applicable), on the assumption that the goods, instead of being exported, had been sold in the ordinary course of trade in Malaysia.

In calculating normal values the original investigation incorporated adjustments to ensure that normal values were properly comparable with export prices. The adjustments were in respect of domestic and export credit terms, export inland freight, wharfage and associated free-on-board (FOB) charges, and (where appropriate) domestic inland freight and import duty on wheels and axles.

#### 4.1.4 Dumping

Customs original investigation determined that a comparison of the weighted average of export prices with the weighted average of corresponding normal values over the investigation period resulted in a dumping margin of 6.21 per cent.

## **4.2 TMRO Review**

### **4.2.1 Applications for Review**

Schaefer submitted that Customs original investigation erred in that:

- the cost of marine insurance should not have been included as an adjustment in calculating the export price;
- the adjustment to the export price for marine insurance did not represent the actual premium paid;
- the volume of defective or substandard bins should have been included in the quantity used to determine SWT's unit cost to make and sell (CTMS); and
- it was unreasonable to apply a domestic credit terms adjustment to sales at the domestic "contractor" level of trade using average credit terms determined from domestic sales at the "reseller" level of trade.

#### **4.2.1.1. Marine insurance**

Schaefer submitted that in relation to sales from SSI Singapore they did not incur any expense for marine insurance as the premium is paid by the parent company in Germany under a global policy. The premium according to Schaefer was determined as a proportion of turnover (0.03%). Schaefer claimed that Customs original investigation erred in their use of an arbitrary adjustment based on 0.3% of the Cost Insurance Freight (CIF) value. Further, Schaefer claimed that sales from SSI Singapore to SSI Australia were FOB, and accordingly no deduction should be made for marine insurance for these sales.

#### **4.2.1.2. Substandard bins – affect on unit costs**

Schaefer contended that Customs should have divided the total factory cost by the total number of bins produced (including substandard and damaged bins) when calculating SWT's unit CTMS.

#### **4.2.1.3. Domestic credit terms and level of trade**

Schaefer submitted that it was inappropriate for Customs to apply the average credit terms of SWT's domestic sales to resellers to export sales at the contractor level of trade when determining a reasonable domestic credit term adjustment. Schaefer contended that Customs should have had regard to transactions at the domestic contractor level of trade that, although outside the investigation period, would nevertheless be appropriate for the purpose of determining the credit terms applicable to average domestic sales at the contractor level of trade.

### **4.2.2 TMRO report**

The TMRO report acknowledged each of the three issues above, but only examined the issues of marine insurance and the inclusion of substandard bins in the determination of a unit CTMS. The TMRO recommended to the Minister that Customs reinvestigate that the dumping margin is 6.21 per cent.

#### 4.2.2.1. Marine insurance

The TMRO accepted Schaefer's submission as to the reasonableness of an adjustment to the export price for marine insurance.

The TMRO concluded that, insofar as exports to SSI Australia were concerned, an adjustment to the export price for marine insurance should not be allowed as the sales in question were on FOB terms.

The TMRO accepted that, if it were reasonable to allow an adjustment for marine insurance, then Schaefer's figure (0.03%) is appropriate, and not the amount applied by Customs original investigation (0.3%).

#### 4.2.2.2. Substandard bins – affect on unit CTMS

The TMRO accepted Schaefer's submission that Customs original investigation should have included substandard MGBs in the denominator of the calculation of SWT's unit CTMS.

### **4.3 Customs reinvestigation**

#### **4.3.1 Submissions to the reinvestigation**

Customs reinvestigation received submissions from Schaefer and Sulo and Nylex. In so far as their respective submissions addressed the issue of the dumping margin, they may be summarised as follows:

##### 4.3.1.1. Submission from Schaefer

###### *Marine Insurance*

Schaefer retracted its argument to the TMRO that there should not have been an adjustment for marine insurance in the case of exports to SSI Australia and accepted that the methodology applied by Customs original investigation was justified. However, in relation to the amount of the adjustment, Schaefer repeated its earlier submission that the correct rate was 0.03%, not 0.3%.

###### *Substandard bins – affect on unit CTMS*

Schaefer argued that even though "reject" bins had limited commercial value (i.e. they were either sold cheaply as factory seconds or reground for re-input to production), they nevertheless formed part of SWT's production.

###### *Domestic credit terms and level of trade*

Schaefer submitted that export sales were at the contractor level of trade, which were in larger volumes and have longer credit terms than sales at the reseller

level of trade. Schaefer suggested that in determining its adjustment, Customs reinvestigation should consider contractor level credit periods applying to transactions outside the investigation period and suggested that subsection 269TAC(9) required the Minister to do so.

#### **4.3.1.2. Submission from Sulo and Nylex**

Sulo and Nylex made submissions on the following points relevant to the determination of the dumping margin.

##### *Marine Insurance*

In relation to sales by SSI Singapore to SSI Australia, Sulo and Nylex's submission supported the methodology of Customs original investigation in making an adjustment for marine insurance.

This submission supported the valuation of the marine insurance adjustment by Customs original investigation, noting that Customs had no means of verifying the claimed amount.

##### *Level of profit adjustment*

To enable determination of a true Ex-Works (EXW) export price for sales from SWT, Sulo and Nylex considered it appropriate to deduct the level of profit achieved by SSI Singapore in its sales to SSI Australia.

##### *Normal value calculation*

Sulo and Nylex submitted that domestic selling prices in Malaysia should have been used as the basis for normal values and that the normal values determined by Customs original investigation significantly understated the true level of prevailing selling prices in Malaysia for goods exported to Australia.

## **4.4 Customs reinvestigation assessment**

### **4.4.1 Export prices**

Having regard to the circumstances of the export transactions, and to the roles of the parties involved, Customs reinvestigation confirms that SSI Singapore was the exporter and that WES and SSI Australia were separately the importers of MGBs exported from Malaysia to Australia during the investigation period.

In respect of the SSI Singapore transactions with WES, Customs reinvestigation confirms that the importer purchased the goods from the exporter, in arms length transactions under subsection 269TAA(1). With the exception of the calculation for marine insurance (discussed below), Customs reinvestigation confirms the original investigation's assessment of export price under subsection 269TAB(1)(a).

In the case of SSI Singapore sales to SSI Australia, Customs reinvestigation confirms that these were not arms length transactions. Therefore, export price cannot be established under subsection 269TAB(1)(a). With the exception of the calculation for marine insurance, Customs reinvestigation confirms the

original investigation's assessment of export prices under subsection 269TAB(1)(b).

#### 4.4.1.1. Marine insurance

Customs original investigation considered that even though a cost for marine insurance had not been assigned to Schaefer, it remained a cost incurred after exportation and that an adjustment would be necessary to reduce the export invoice prices to the FOB level in accordance with subsection 269TAB(1)(a) or (b). The original investigation took account of an amount based on 0.3% of the CIF invoice value.

Although Schaefer conceded that Customs original investigation was correct to apply a negative adjustment to calculate export price, Schaefer nevertheless disputed the quantum of the adjustment - contending it should be 0.03% rather than 0.30% of the CIF invoice price.

Customs reinvestigation reviewed a copy of the insurance policy document and accepts Schaefer's submission on this point. Customs reinvestigation deducted an amount of 0.03% of CIF value when calculating the export price. When compared with Customs original investigation, the effect of this change was to decrease the dumping margin.

#### 4.4.1.2. Exporter profit

Customs reinvestigation considered the Sulo and Nylex claim that an amount of profit should be deducted in calculating EXW export prices for SWT.

Customs reinvestigation considers that as SSI Singapore was the exporter, and given that normal value and export prices were compared at the FOB level, it would not be appropriate to deduct an amount for profit in calculating export prices.

### **4.4.2 Normal values**

Customs reinvestigation examined the available evidence in relation to domestic sales and CTMS data for the Malaysian manufacturer and exporter, and confirms the original investigation's assessment of normal values for 120 and 240 litre MGBs by using domestic sales and constructed normal values respectively.

In its examination, Customs reinvestigation also considered the issues discussed below.

#### 4.4.2.1. Substandard bins – affect on unit costs

Customs reinvestigation examined Schaefer's claim that the unit CTMS used by Customs in the original investigation was incorrect because SWT's total CTMS was divided by the quantity of only standard MGBs (as opposed to the denominator being based on total MGB quantity including "reject" or substandard MGBs).

Customs reinvestigation expects that reasonable approaches to accounting for MGB costs per unit, including substandard MGBs, would vary according to whether the products are considered by-products or joint products. Customs reinvestigation considers it is not clear how Schaefer regarded sub-standard MGBs. However, having regard to the low relative volumes and sales values of sub-standard bins Customs reinvestigation considers it reasonable that sub-standard bins could be regarded as a by-product of manufacturing standard bins.

Customs reinvestigation notes Schaefer's confirmation that at least some sub-standard MGBs had commercial value to Schaefer, being sold at reduced prices, and others were reintroduced to the production process. In the circumstances, Customs reinvestigation considers it would be reasonable to value the by-product at its net realisable value and recognise that value as an offset to production cost for the standard MGBs – that is, to calculate the net cost of the main product. However, Customs reinvestigation cannot separately identify the revenue from substandard MGB sales, nor can it accurately identify the cost accounting treatment of substandard MGBs reintroduced to the production process.

Notwithstanding the uncertainty of the treatment of costs that might be reasonably treated as contra production costs in assessing standard MGB costs, Customs reinvestigation considers it would not be appropriate to divide the total production costs by the volume of goods that include sub-standard MGBs. Such calculations could result in a distorted unit CTMS, especially where the volume of by-products is unusually high. It is also possible that distortion of unit costs could be generated where the main product volumes and by-product volumes cannot be meaningfully compared. For example, a sub-standard MGB might consist of only a faulty bin body, whereas the main product comprises bin body, wheels, axles, and lid.

Therefore, Customs reinvestigation confirms that the total costs for MGBs should only be divided by the volume of standard MGBs to establish a unit CTMS for standard MGBs.

#### 4.4.2.2. Domestic credit terms and level of trade

The original investigation incorporated negative adjustments for domestic credit terms in calculating normal values. This was the case for all normal values, whether based on domestic selling prices or a cost construction.

In the case of normal values based on domestic selling prices under subsection 269TAC(1), Customs reinvestigation has made the same negative adjustments in the normal value calculations as those made in the original investigation.

In relation to the 240 litre MGBs, for which constructed normal values were calculated, Schaefer submitted that a negative domestic credit terms adjustment based on domestic sales to resellers was not appropriate. Schaefer suggested Customs should have regard to the longer credit terms it considered were applicable to domestic sales to contractors.

However, before considering the quantum of any adjustments for credit terms in the constructed normal values, Customs reinvestigation considered whether there were circumstances that warranted adjustments for credit term differences between export sales and constructed normal values.

Customs reinvestigation noted that SWT and SSI Singapore provided Customs original investigation with selling, general and administrative (SG&A) expenses (including finance expenses). This financial data did not separately identify the cost of extending credit to “resellers” as distinct from the costs of extending credit to “contractors”. SWT and SSI Singapore, also, did not distinguish between the costs of extending credit to export and domestic customers, other than to identify the number of days credit actually extended in domestic and export sales data for MGBs.

Consequently, Customs reinvestigation considers that the unit cost constructions for 240 litre MGBs, in both “reseller” and “contractor” sales, effectively contain (among other financial expenses) a weighted average measure of the cost of extending credit to all of SWT’s and SSI Singapore’s customers, for all products, to all markets, and to all levels of trade.

Customs reinvestigation explored the possibility that the average credit terms extended by SWT and SSI Singapore could be determined by having regard to an overall average accounts receivable ratio. However, Customs reinvestigation considers the financial data on record is not sufficiently complete to enable reasonable assessments of average credit periods for SWT and SSI Singapore for the investigation period.

Therefore, Customs reinvestigation considers it has no reasonable means to assess whether the notional price (constructed normal value) contains any more or less a reflection of the cost of credit to that which is notionally contained in the export prices. On this basis, Customs reinvestigation considers that there should be no adjustments, positive or negative, in the constructed normal values in relation to credit terms. The effect of this change in approach to credit terms, when compared with the original investigation, was to decrease the dumping margin.

The approach of Customs reinvestigation in these circumstances can be distinguished from the comparison of a domestic selling price normal value with export price where actual credit terms have been established and adjustments for the differences in export and domestic credit terms can be reasonably assessed.

#### 4.4.2.3. Export credit terms

Customs reinvestigation applied the same positive adjustment, as those applied by the original investigation, to the normal values of 120 litre MGBs (that were sales to the reseller level of trade) to ensure that they were properly comparable to export price credit terms for 120 litre MGBs sold to resellers.

However, as previously explained, Customs reinvestigation does not consider it appropriate to make credit terms adjustments in calculating constructed normal values for 240 litre MGB sales to the contractor and reseller levels of trade.

#### 4.4.2.4. EXW to FOB costs

Customs reinvestigation noted an error in the calculation of adjustments for expenses incurred between the delivery terms of EXW and FOB - the original investigation had used an expense item that was expressed in Singaporean dollars rather than Malaysian ringgit. The impact of the correction was to increase the amount of the positive adjustment to normal values in respect of EXW to FOB expenses. The effect of this change to EXW to FOB expenses, when compared with the original investigation, was to increase the dumping margin.

#### 4.4.3 Conclusion

Customs reinvestigation determines that a revised comparison of the weighted average of export prices with the weighted average of corresponding normal values over the investigation period resulted in a new finding that the dumping margin is 6.47 per cent.

## 5 ISSUE 2 – CAUSATION AND MATERIAL INJURY

The Minister has directed Customs to reinvestigate the finding that there is a causal link between dumped imports and injury to the Australian industry and that the injury caused to the Australian industry by dumping is material.

### 5.1 Original Investigation

#### 5.1.1 Customs assessment in the original investigation

Customs original investigation found as follows:

- dumped Malaysian MGBs entered the Australian market from May 2004 and won five tender contracts (sales of approximately 213,000 units);
- Malaysian MGBs undercut Australian industry's prices in four of the five tenders;
- Malaysian MGBs undercut Australian industry's prices in all five tenders when payment terms and free lid assembly service (in some sales) are accounted for;
- price was a key factor and "dumping was pivotal" to the outcome of the tenders;
- the five tenders won by the Malaysian MGBs represented a significant loss of market share to the Australian industry, particularly in the tender market sector;
- the success of the Malaysian MGBs at dumped prices had a price effect on the Australian industry - tender pricing was "significantly higher" prior to the entry into the market of the dumped Malaysian exports even though raw material costs increased significantly over the period;
- the loss of a large volume of the Australian market to dumped imports was the "major contributor to the pricing pressures";
- the impact of dumping was no less significant because the success of the Malaysian MGBs was confined to the State of New South Wales;
- the continued low pricing in tenders following the departure of Malaysian MGBs from the market resulted from heightened competition and is not evidence that dumping has not caused injury; and
- injury suffered as a result of lost volume in relation to the five tender contracts resulted from dumping and is not immaterial.

Customs original investigation concluded that:

- the price undercutting (necessary to win the 240 litre tender contracts);
- the reduction in profit margins (due to decreasing prices and increasing costs which could not be recouped); and
- the reduction in capacity utilisation (which increased the unit costs and reduced the return on investment),

caused a negative flow-on effect to the price of other than 240 litre sized MGBs, in particular 120 litre MGBs. Customs original investigation found that this occurred because sales prices decreased as manufacturers competed more aggressively to win new sales to replace the lost tender volumes and as customers' price expectations for 120 litre MGBs decreased.

Customs original investigation concluded that dumped imports of MGBs from Malaysia caused material injury to the Australian industry producing like goods. Customs original investigation considered that its analysis of other possible causes of injury did not detract from this finding.

## **5.2 TMRO Review**

### **5.2.1 Application for Review**

As noted, the TMRO received an application for review from Schaefer claiming several grounds for review. Of relevance to the second issue as identified by the TMRO, Schaefer raised, essentially, two grounds for its application for review: (a) that the Minister was wrong to determine that exports of MGBs from Malaysia had caused material injury to the Australian industry; and (b) that the Minister was wrong to find that the Australian industry had suffered material injury.

#### **5.2.1.1. Volume injury**

Schaefer contended that Customs original investigation was wrong to find that the Australian industry suffered volume injury. Schaefer submitted that Australian industry's sales of 240 litre MGBs increased over the injury analysis period.

#### **5.2.1.2. Price depression**

Schaefer contended that Customs original investigation was wrong to find that the Australian industry suffered price depression. Schaefer submitted that Customs original investigation also found that the Australian industry's average prices of 240 litre MGBs in the tender market increased over the injury analysis period.

#### **5.2.1.3. Price suppression**

Schaefer contended that Customs original investigation was wrong to find that the Australian industry suffered price suppression in 2004/05 on 120, 240 litre and all MGB sizes combined. Schaefer submitted that Sulo's price of like goods increased over the injury analysis period, as did Sulo's unit CTMS over that period, but at a lesser rate. Schaefer submits that Sulo did not suffer price suppression.

#### **5.2.1.4. Reduced return on investment**

Schaefer contended that Customs original investigation could not conclude whether or not the Australian industry suffered reduced return on investment because the industry visit reports reached no conclusions about reduced return on investment.

#### 5.2.1.5. Reduced capacity utilisation

Schaefer contended that Customs original investigation was wrong to find that the Australian industry suffered reduced capacity utilisation because Customs original investigation concluded that the capacity utilisation of Nylex and Sulo increased over the injury analysis period.

#### 5.2.1.6. Exports of MGBs from Malaysia caused material injury to the Australian industry

Schaefer contended that the exported Malaysian MGBs did not and cannot have caused material injury to the Australian industry.

Schaefer submitted that Customs original investigation failed to properly consider whether or not dumping caused material injury – Customs original investigation found that there was injury and that dumping had caused injury, but did not consider whether that injury was material.

Alternatively, Schaefer submitted that even if Customs original investigation properly found that the injury was material, then it is nevertheless not possible to conclude, “injury caused by dumping was material”, unless the injury found to have been suffered by the industry was material, regardless of cause. Schaefer observed that Customs did not make such a finding.

#### *Assumption of dumping*

Schaefer contended that Customs original investigation was wrong to find that all imports of MGBs imported during the investigation were dumped because Customs original investigation also concluded that the 240 litre MGBs sold at the reseller level of trade in the September 2005 quarter were dumped at a *de minimis* margin.

#### *Causation and the five lost tender contracts*

Schaefer contended that Customs original investigation was wrong to conclude that the loss of the five tender contracts amounted to proof of causation.

Schaefer submitted that the following factors affected the loss of the five tender contracts:

- Ku-ring-gai Council: Schaefer’s bid for 360 litre MGBs;
- Canterbury City Council: superior quality of Schaefer’s MGBs;
- Eurobodalla Local Council: superior quality and service of Schaefer’s MGBs;
- Bega Valley Local Council: superior quality of Schaefer’s MGBs; and
- Coffs Coast Councils: superior quality and track record of Schaefer’s MGBs and EN840 certification.

Schaefer further submitted that none of the purchasers (under the five tender contracts) claimed that they purchased Schaefer’s MGBs because they were

the cheapest. Therefore, Schaefer contended, in the absence of such a finding, Customs original investigation could not find that dumping had caused material injury.

Schaefer further contended that Customs original investigation was wrong to find that the loss of volume of 240 litre MGBs sales caused the Australian industry to compete more aggressively in the 120 litre MGB market thereby lowering their price. Schaefer submitted that:

- it did not compete in the 120 litre MGB tender market; and
- Australian industry did not suffer any loss of 240 litre MGB volumes.

Schaefer further submitted that 120 litre MGBs are losing popularity because of a change in demand patterns caused by the surge in demand in Victoria prior to 2005 (due to regulatory change in that State) and the general growth in demand for the new 140 litre “squat” style MGB.

Schaefer contended that Customs original investigation was wrong to conclude that the price undercutting in the 240 litre MGB tender contract market also had a flow-on effect on the price of all other MGBs as customers demanded comparative price changes.

Schaefer submitted that Customs original investigation was wrong to consider the combined injury data of Australian industry members. Schaefer contended that when individual Australian industry member’s data is considered separately it suggested that factors other than dumping caused injury.

Schaefer did not accept the conclusion of Customs original investigation that price was a key factor in the purchase of MGBs and that had the Malaysian MGBs been offered at “undumped” prices, the Australian industry would have been considerably more competitive in the tenders and would have been more successful in the tender contracts. Schaefer asserted that had its MGBs been offered at an “undumped” price they would have been marginally more expensive.

Schaefer submitted that Customs original investigation was wrong to examine whether dumping had caused material injury to only one segment of the Australian industry (240 litre MGBs) which supplied the like goods to a particular part of the market (tender contracts).

## **5.2.2 TMRO report**

### **5.2.2.1. Existence of injury**

The TMRO found the existence of price suppression and price depression in the market for MGBs. Further, the TMRO found that Sulo and Nylex lost profitability.

### 5.2.2.2. Australian industry producing like goods

The TMRO found that Sulo and Nylex are the Australian industry's major participants and noted that in 2004, Waste & Recycling Supplies (SA) Pty Ltd (WRS) commenced large-scale production of MGBs.

The TMRO accepted that there was evidence that the Australian industry participants had at various times engaged in predatory pricing to attract a greater market share for themselves.

Further, the TMRO observed that MGBs manufactured by WRS were the current price leader in the market.

The TMRO accepted that Australian manufacturers alone were unable to meet the demand for MGBs and noted that the Australian industry does not manufacture 360 litre MGBs.

Further the TMRO concluded that the fiercely competitive conduct of the Australian industry caused a downward price trend over many years that resulted in low margins for participants who nevertheless remained profitable.

The TMRO observed that these conditions in the Australian industry existed prior to Schaefer entering the NSW tender contract market for 240 litre MGBs.

### 5.2.2.3. Causes of injury

In relation to the award of the five contracts to supply 240 litre MGBs to tender contractors and one Municipal Council, the TMRO did not accept the conclusion in the original investigation that price was a key factor in the award of all the contracts.

The TMRO accepted that factors other than the price of the Malaysian MGBs were the reason the five contracts were awarded to Schaefer – these factors were found by the TMRO to include the:

- perceived durability and quality of Schaefer MGBs;
- failure of Australian industry participants to comply with tender requirements;
- flexibility of payment terms;
- perceived superior quality of Schaefer MGBs;
- superior after sales service of Schaefer;
- perceived compliance with European Standard certification;
- ability to negotiate package deals to supply 240 litre and 340/360 litre MGBs; and
- relationship issues arising from previous business dealings.

The TMRO accepted that it was open to conclude that the price suppression, price depression and reduced profitability was caused by reasons unrelated to Schaefer's entry to the Australian MGB market. The TMRO observed evidence that the Australian industry failed to make offers to supply or made offers out of time or were unable to supply the quantity required.

The TMRO found that Schaefer had "argued convincingly" that the importation of Schaefer MGBs had not caused injury to the Australian industry, because:

- the existence of conditions of competition between Australian industry members (which brought about and sustained a "high volume and low price" market) prior to the entry of Schaefer;
- the growth of WRS' market share;
- the decrease of overall market size in 2005 (compared to 2004); and
- Schaefer's MGBs were sold on the basis of their particular characteristics.

The TMRO concluded that sales volume of Australian industry had increased across the injury period.

#### 5.2.2.4. Other factors causing injury

The TMRO accepted the following factors affected profitability:

- the change in the regulatory environment in Victoria during 2003-4 caused a surge in demand in that year;
- the decline in popularity of 120 litre MGBs;
- the growing popularity of the "squat" designed 140 litre MGB;
- loss of market share by Australian industry incumbents to WRS; and
- inability of Australian manufacturers to supply the market.

In summary, the TMRO accepted that if the Australian industry suffered injury, it was self-inflicted as a result of predatory pricing and inadequate attention to customer requirements.

#### 5.2.2.5. Materiality of injury

The TMRO did not accept that the Australian industry could claim to have been injured when Schaefer had only been awarded five contracts, only in NSW and not elsewhere in Australia.

In summary, the TMRO concluded that if the Australian industry suffered any injury it was a minor loss of market share in only the 240 litre MGB tender contract market.

### **5.3 Customs reinvestigation**

#### **5.3.1 Submissions to the reinvestigation**

##### **5.3.1.1. *Prices in the Australian market had been established since 2003***

Schaefer submitted that pricing in the Australian market had been established since 2003.

Sulo and Nylex disputed this submission. They claimed that in the absence of dumping they would have increased their selling prices to reflect their increases in High Density Polyethylene (HDPE) raw material costs.

##### **5.3.1.2. *Prices set by the conditions of competition operating between Australian industry members***

Sulo and Nylex disputed the TMRO's suggestion that the "Australian industry participants have at various times engaged in predatory pricing to attract a greater market share for themselves".

Sulo and Nylex further submitted that the TMRO's suggestion that Australian industry "deliberately undercut in tender contracting and that retaliatory action was likely" was simply an untested accusation.

Schaefer submitted that it re-entered the market after a long absence at "prices which had already been set by the conditions of competition operating amongst the Australian industry members". Schaefer submitted that this was largely due to the entry of WRS in 2003 (which achieved rapidly growing sales volumes over 2004 and 2005).

Sulo and Nylex disputed this assertion and pointed to their claim that the successful quotes by Schaefer for the supply of MGBs to the five tender contracts undercut the lowest Australian industry selling prices in four of the five contracts secured by Schaefer. Sulo and Nylex further asserted that once payment terms and lid assembly were considered, the Malaysian manufactured MGBs undercut the Australian industry's selling prices in all five contracts secured by Schaefer.

Sulo and Nylex further pointed to Customs original investigation's finding that "dumped prices tendered by Schaefer were the main reason that caused the Australian industry to suffer price suppression, depression and reduced profits".

Further, Sulo and Nylex argued that award of the five tender contracts to Schaefer represented (over a 15-month period) eight per cent of the total market and, in terms of actual import volumes over the investigation period (1 October 2004 to 30 September 2005), represented an increase in Schaefer's market share from zero to five per cent.

Sulo and Nylex submitted that based on the price undercutting analysis performed by Customs original investigation, the levels of price depression suffered by the Australian industry on its sales of 240 litre MGBs would have been even greater if they won the contracts at the quoted and depressed prices.

### 5.3.1.3. Loss of market share to WRS

Schaefer submitted that the TMRO's conclusion that "far more market share has gone to WRS than has gone to Schaefer" was correct. Sulo and Nylex rejected this conclusion.

### 5.3.1.4. Superior quality of Schaefer MGBs

Schaefer asserted that its customers considered that Schaefer MGBs were of superior quality, in terms of their durability, to the MGBs offered by its competitors and that the Australian manufactured MGBs were inferior.

Sulo and Nylex rejected Schaefer's submission and asserted that Sulo's 240 litre MGBs were certified to the same standard as the Schaefer MGBs, namely European Standard EN840. Alternatively, Sulo and Nylex argued that if Malaysian MGBs were superior to Australian MGBs, then why were they sold at a price less than the "inferior" Australian MGBs. Sulo and Nylex discouraged reliance on the views of a single purchaser whom, the Australian industry accused of trying to justify a purchasing decision to buy dumped MGBs.

### 5.3.1.5. Materiality of injury

Schaefer noted that Customs original investigation concluded that Schaefer sales were lost sales to the Australian industry and that this therefore constitutes sales volume injury. Schaefer argued that the WTO Anti-dumping Agreement and the Act required an examination of the materiality in the degree of the injury caused by dumped imports. Applied here, Schaefer submitted that in an expanding market, a percentage decrease in overall market share of the incumbent Australian industry participants is an unreliable and inconclusive indicator of injury.

Further, Schaefer submitted that the matrix of injury data collected by Customs original investigation does not show the existence of injury in the form of lost sales volume (overall or in relation to 240 litre MGBs), price depression or suppression, lost profit or declining profitability. Schaefer submitted that any injury had been caused by factors other than dumping.

Schaefer submitted that the quantity of imports were not material.

Sulo and Nylex responded to this submission by highlighting that of the volume of tender contracts awarded in 2004/05, Schaefer secured approximately 110,000 units (from a zero market share the previous year), or a 20% share of the tender market.

Sulo and Nylex further referred to Customs original investigation's determination that Schaefer secured a five per cent market share in 2004/05, from a zero per cent share the previous year.

Sulo and Nylex further submitted that the loss of five tender contracts, amounting to approximately 214,000 units within a short timeframe, significantly disrupted the Australian industry's volume-dependent manufacturing operations. Sulo and Nylex referred to the finding of Customs original investigation that the lost volume accounted for approximately eight per cent of market share. Actual

import volumes in the 2004/05-year represented a loss of five per cent of market share. As such, Sulo and Nylex submitted that the loss of market share was not “negligible” in the context of material injury to the Australian industry.

Sulo and Nylex rejected the TMRO’s suggestion that the injury suffered by Australian industry was not material by reason that it involved the loss of “only five contracts, only in NSW and not elsewhere in Australia”.

Sulo and Nylex submitted that notwithstanding that the injury was contained it nevertheless represented historic low prices for the Australian market during a period of increasing raw material HDPE costs and the five lost tenders totalled 214,000 units.

Sulo and Nylex submitted that it is not a requirement for Customs reinvestigation to quantify the impact of injury from other factors not relating to dumping, but rather, Customs reinvestigation must determine that the injury from the dumping is material. In reply Schaefer rejected this submission and suggested that Customs reinvestigation must quantify the impact of any apparent injury from factors not related to dumping by applying some economic model or “good sense” to the objective evidence.

#### 5.3.1.6. Causes of five lost sales

Schaefer submitted that its customers considered that its MGBs were of a superior quality in terms of their durability.

In response to Schaefer’s claims that the five tender contracts were lost by reason of factors other than price, namely, product attributes, Sulo and Nylex submitted that the Australian industry tendered for each of the five nominated contracts with tender compliant offers and that, ultimately, the tenders were secured on the basis of price. Sulo and Nylex disputed the TMRO’s acceptance of Schaefer’s claims in relation to these factors, in particular, the claims that lids on Australian MGBs tended to “pop off”, relationship issues which determined the outcome of the Eurobodalla and Coffs Coast Councils contracts and that the Australian industry could not meet market demand.

Schaefer submitted that the methodology of the price undercutting analysis applied by Customs original investigation was not apparent. Schaefer inquired whether the purchasers applied the same price undercutting analysis in making the decision to purchase the Schaefer MGBs. Schaefer submitted that Customs reinvestigation should carefully consider the reasons why (based on the evidence) the purchaser accepted the Schaefer MGB offers.

#### 5.3.1.7. Causation of material injury

Schaefer submitted that the fact its MGBs did not cause injury to the Australian industry is demonstrated by the incongruity between the “mildly favourable” 240 litre graphs in Final Report No. 108 relating to sales volume, price depression and price suppression, and the unfavourable profit and profitability graphs. Schaefer observed that profit and profitability was strongly unfavourable in relation to 120 litre MGBs.

Schaefer submitted that Customs original investigation concluded that Schaefer's 240 litre MGB prices have had a severe impact on 120 litre MGB sales volumes and prices. Schaefer rejected this conclusion on the basis that dumping alone could not have caused the Australian industry to suffer reduced profits and profitability on reduced volumes of 120 litre MGBs where Schaefer has exported 240 litre MGBs into an expanding market for 240 litre MGBs and that there is no price depression or price suppression. Schaefer submitted that there must be causes other than Schaefer's sales of 240 litre MGBs that may cause this injury, namely (a) reduced sales of 120 litre MGBs, (b) competition between Australian industry members in the new 140 litre MGB, (c) competition from WRS, (d) expenditures and inefficiencies in the Australian industry unrelated to Schaefer.

### **5.3.2 Customs reinvestigation assessment**

#### **5.3.2.1. Dumping**

Customs reinvestigation has established that exports of MGBs from Malaysia during the investigation period were at dumped prices. Dumping margins calculated for those exports were 6.47 per cent. This margin is not negligible.

#### **5.3.2.2. Economic condition of the industry**

Customs reinvestigation identified that the original injury analysis incorrectly included certain financial data relating to one of the major Australian MGB manufacturer's production and sales of goods that were other than "like goods".

In correcting the data, Customs reinvestigation was unable to accurately account for that entity's performance in relation to MGBs other than for 120 and 240 litre MGBs. Therefore, Customs reinvestigation examined the financial data in respect of all "like goods" for one of the major MGB manufacturers, and the majority of "like goods" for the other.

The original investigation noted that the combined Nylex and Sulo sales volume represented 75 per cent of the total MGB sales volume for the Australian industry in 2004/05, and greater than this level in the previous two years. After correcting the error, as discussed above, Customs reinvestigation noted these levels are marginally lower, but cannot be disclosed for confidentiality reasons.

Customs reinvestigation confirms the conclusion of the original investigation that, while recognising some differences between the four Australian manufacturers, WRS and OSGS would face broadly similar cost and pricing pressures as those faced by Nylex and Sulo. Customs reinvestigation considers the scale of the data correction is not such that would demand an alteration to this position.

Accordingly, Customs reinvestigation, like the original investigation, has largely based its assessment of the economic condition of the industry on the verified information of Nylex and Sulo.

The Customs reinvestigation analysis of the economic condition of the industry, after correcting the data, is contained at Appendix 1. In the context of the revised economic condition of the industry analysis, Customs reinvestigation

considered whether dumping caused material injury to the Australian MGB industry, discussed in the following sections.

#### 5.3.2.3. Causation

Customs original investigation concluded that the volume injury suffered by Australian industry through lost sales and a loss of market share was caused by the export to Australia of Malaysian MGBs at dumped prices which caused price undercutting and resulted in the Australian industry losing five contracts to supply 240 litre MGBs to four contractors and one Municipal Council, namely:

- Collex Pty Ltd for supply to Ku-ring-gai Council in mid-2004 (31,720 units);
- Canterbury City Council in 2004/05 (32,000 units);
- Watts Waste for supply to Bega Valley Local Council in 2004/05 (16,991 units);
- Staples Waste for supply to Eurobodalla Local Council in 2004/05 (21,876 units); and
- Handybin Waste Services (Coffs Harbour) Pty Ltd for supply to Coffs Coast councils in 2005/06 (111,000 units).

Customs reinvestigation reviewed each of the above five lost sales.

*Collex Pty Ltd for supply to Ku-ring-gai Council in mid-2004 (31,720 units)*

Customs original investigation found that SSI Singapore offered a price on behalf of SSI Australia to Collex Pty Ltd (Collex) for the supply of Malaysian MGBs that was lower than the price offered by Sulo (the only member of the Australia industry to submit a rival offer to Collex).

Customs reinvestigation confirmed the original investigation's calculation of the unassembled, Free-into-Store (FIS), Goods and Services Tax (GST) exclusive price per unit offered by SSI Australia and Sulo to Collex.

Customs reinvestigation then applied the further price incentives offered by SSI Australia to Collex equally across each unit and determined that this caused SSI Australia's price to further undercut the price offered by the Australian industry member (Sulo).

Customs reinvestigation considered the comments of Collex that:

- it required the supply of both 240 litre and 340/360 litre MGBs;
- it preferred the 340/360 litre MGBs supplied by SSI Australia (that were imported from the United States) to the equivalent 340/360 litre MGBs to be supplied by Sulo;
- although all 240 litre MGBs were considered comparable, the Malaysian MGBs were considered to be of superior quality;

- the Australian and Malaysian 240 litre MGBs were both considered good quality products;
- it could obtain a better bargain by buying both the 340/360 and 240 litre MGBs from SSI Australia; and
- further price and non-price incentives were also offered by SSI Australia to Collex.

Customs reinvestigation has considered claims by Collex that non-price factors were relevant to its decision to accept SSI Australia's offer. Customs reinvestigation nevertheless considers that given the existence and magnitude of price undercutting by SSI Australia and the apparent attraction of the package deal price incentive, that price was the key factor in the decision to accept SSI Australia's offer.

*Canterbury City Council in 2004/05 (32,000 units)*

Customs original investigation found that Canterbury City Council (Canterbury) advertised a tender to purchase 32,000, 240 litre MGBs. Sulo, Nylex, WRS, SSI Australia and one re-seller of Nylex MGBs, all lodged tenders.

Customs original investigation determined that SSI Australia offered a price to Canterbury for the supply of Malaysian MGBs that was lower than the price offered by Australia industry participants.

Customs reinvestigation confirmed the original investigation's calculation of the unassembled, FIS, GST exclusive price per unit offered by SSI Australia and each Australian industry participant.

Customs reinvestigation confirmed the original investigation's finding that the SSI Australia offer included free lid-assembly. This offer was not included in the tenders of the Australian industry participants. Customs reinvestigation further confirmed the original investigation's assessment of the value of lid assembly. Customs reinvestigation confirms the original investigation's application of a negative adjustment to SSI Australia's price.

Customs original investigation found that SSI Australia offered more favourable credit terms to purchasers than those offered by Australian industry participants. Customs reinvestigation confirms the original investigation's application of a negative credit terms adjustment to SSI Australia's price.

Customs reinvestigation confirms the original investigation's determination of SSI Australia's adjusted price and confirms that SSI Australia's tendered price undercut the lowest price offered by an Australian industry participant.

Customs reinvestigation noted Canterbury's claims that it accepted SSI Australia's tender and rejected the tenders supplying the Australian manufactured MGBs on the grounds of price, bin quality and strength, ability to satisfy tender specification, failure to supply a sample bin, lid hinging and strength and axle housing design.

Customs reinvestigation noted that the Council considered that the Schaefer MGBs were superior in the following regards:

- higher resin density in the MGB body than the Australian products – the Council considered that this resulted in greater strength for the “grabber arm” on the waste collection truck;
- greater reinforcing near axle shaft;
- stronger lids; and
- four-pin lid fastening with stapled pins.

Customs original investigation determined that:

- price was the most important factor in determining the successful tender; and
- the Malaysian MGBs were preferred in terms of certain physical qualities and were also the lowest priced of the conforming bids.

Customs reinvestigation observed that Canterbury preferred SSI Australia's tender on price and other non-price factors. Customs reinvestigation nevertheless considers that given the existence and magnitude of price undercutting by SSI Australia, price was the key factor in the decision to accept SSI Australia's offer.

*Watts Waste for supply to Bega Valley Local Council in 2004/05 (16,991 units)*

Customs original investigation found that SSI Singapore offered a price to Watts Waste for the supply of Malaysian MGBs that was lower than the price offered by Sulo and Nylex, the only two members of the Australia industry to submit compliant rival offers. The evidence indicates that one Australian industry member submitted a late quote that was not considered.

Customs reinvestigation confirmed the original investigation's calculation of the unassembled, FIS, GST exclusive price per unit offered by SSI Singapore and each Australian industry participant.

Customs reinvestigation confirmed the original investigation's finding that the SSI Singapore offer included free lid-assembly. This offer was not included in the tenders of the Australian industry participants. Customs reinvestigation further confirmed the original investigation's assessment of the value of lid assembly. Customs reinvestigation confirms the original investigation's application of a negative adjustment to SSI Singapore's price.

Customs reinvestigation confirms the original investigation's finding that SSI Singapore offered more favourable credit terms to purchasers than those offered by Australian industry participants. Customs reinvestigation confirms the original investigation's application of a negative credit terms adjustment to SSI Singapore's price.

Customs reinvestigation confirmed the original investigation's determination of SSI Singapore's adjusted price and confirmed that SSI Singapore's tendered price undercut the lowest price offered by an Australian industry participant.

Customs reinvestigation agrees with the assessment of Customs original investigation that, although, the purchaser perceived the quality of Schaefer MGBs and customer service and support to be superior to that of the Australian manufacturers, given the existence and magnitude of price undercutting by SSI Singapore, Customs reinvestigation nevertheless confirms that price was the key factor in the decision to accept SSI Singapore's offer.

*Staples Waste for supply to Eurobodalla Local Council in 2004/05 (21,876 units)*

Customs original investigation found that SSI Singapore offered a price to Staples Waste for the supply of Malaysian MGBs that was lower than the price offered by Sulo and Nylex, the only two members of the Australia industry to submit compliant rival offers to Staples Waste.

Customs reinvestigation confirmed the original investigation's calculation of the unassembled, FIS, GST exclusive price per unit offered by SSI Singapore and each Australian industry participant.

Customs reinvestigation confirmed the original investigation's finding that the SSI Singapore offer included free lid-assembly. This offer was not included in the tenders of the Australian industry participants. Customs reinvestigation further confirmed the original investigation's assessment of the value of lid assembly. Customs reinvestigation confirms the original investigation's application of a negative adjustment to SSI Singapore's price.

Customs reinvestigation confirmed the original investigation's finding that SSI Singapore offered more favourable credit terms to purchasers than those offered by Australian industry participants. Customs reinvestigation confirms the original investigation's application of a negative credit terms adjustment to SSI Singapore's price.

Customs reinvestigation confirmed the original investigation's determination of SSI Singapore's adjusted price and confirmed that SSI Singapore's tendered price undercut the lowest price offered by an Australian industry participant.

Customs original investigation considered the claims of Staples Waste that price was not a major factor in the selection of SSI Singapore as the supplier of MGBs. Customs original investigation considered the claims that the choice was based mainly on the better design of the Malaysian MGB's lid and the negative earlier experiences of Staples Waste with Australian manufactured lids. Although Staples Waste believed that certain Australian MGBs were heavier and better than other Australian MGBs, it still considered the Australian lid design was similar across manufacturers. Customs original investigation found that there was a perception that the Malaysian MGBs used superior materials, namely 100% virgin HDPE. This led to the purchaser's belief that the Schaefer product was stronger.

Customs reinvestigation observed that Staples Waste preferred SSI Singapore's offer on price and other non-price factors. Customs reinvestigation nevertheless determines that given the existence and magnitude of price undercutting by SSI Singapore, price was the key factor in the decision to accept SSI Singapore's offer.

*Handybin Waste Services (Coffs Harbour) Pty Ltd (Handybin) for supply to Coffs Coast Councils in 2005/06 (111,000)*

Customs original investigation determined that Handybin was awarded the tender for the provision of waste collection services to several Coffs Coast Councils (Coffs Harbour City, Nambucca Shire and Bellingen Shire Councils). Customs original investigation further determined that SMS Municipal Services Pty Ltd (SMS), sought quotes for the supply of the MGBs under Handybin's tender offer. Customs original investigation noted that Sulo advised that although it provided quotes to several contractors in the lead up to the tender submissions, they did not supply a quote to SMS. Other suppliers of Australian manufactured MGBs also provided quotes.

Customs reinvestigation confirmed the original investigation's calculation of the unassembled, FIS, GST exclusive price per unit offered by each Australian industry participants.

Free lid-assembly was not included in any of the offers of the parties.

Customs original investigation found that SSI Singapore offered more favourable credit terms to purchasers than those offered by Australian industry participants. Customs reinvestigation confirms the original investigation's application of a negative credit terms adjustment to SSI Singapore's price.

Customs reinvestigation confirmed the original investigation's determination of the adjusted prices. However, Customs reinvestigation considers the lowest price to be that of one of the suppliers of Australian manufactured MGBs. Customs original investigation considers Nylex's offer to be the lowest of the Australian industry participants. On the evidence, Customs reinvestigation concluded that one of the suppliers of Australian manufactured MGBs offer was also compliant and could be used for comparative purposes. However, Customs reinvestigation notes that non-price factors specific to the bid of this supplier of Australian manufactured MGBs, suggests that this bid may not have been considered by SMS.

As Customs reinvestigation considers the offer of the supplier of Australian manufactured MGBs to be the lowest compliant offer of Australian industry, then the SSI Singapore offer does not undercut the lowest price of Australian industry.

The evidence in Customs original investigation indicated that the tender required the MGBs to comply with European Standard EN840. Although Customs original investigation obtained copies of the quotes supplied by SSI Singapore to SMS prior to the award of the tender, Customs original investigation did not obtain copies of the initial quotes supplied by the then participating Australian industry participants. Therefore, Customs reinvestigation could not conclude whether the initial quotes supplied by the Australian industry conformed to the tender requirements.

Customs reinvestigation reviewed quotations from both of the suppliers of Australian manufactured MGBs that were issued following the award of the tender to Handybin and found that the quotes contained evidence of certification to EN840 or the German Standard Din RalGZ 951/1.

Customs original investigation observed manufacturer's claims that the German Standard exceeds the requirements of the European Standard. Customs reinvestigation found that although one Australian industry participant provided test results that their MGBs complied with one out of six elements of the European Standard, insufficient proof of compliance was provided and as such, it is reasonable to consider its offer did not comply with the requirement of the tender. Further, Customs reinvestigation was satisfied that the quotes of both of the suppliers of Australian manufactured MGBs claimed that the product to be supplied complied with the European Standard.

Customs original investigation noted the claims of Handybin that compliance with EN840 was a crucial factor in the selection of the successful quote and that SSI Singapore submitted that it was the successful supplier under this tender because it was the only EN840 certified supplier that quoted. Customs reinvestigation found that all but one of the quotes submitted by the Australian industry participants complied with the European Standard and as such were offers that complied with the terms of the tender. Customs reinvestigation found that this was clear on the evidence.

Therefore, although in this case, SSI Singapore did not offer the lowest price and was in fact undercut by an offer from a supplier of Australian manufactured MGBs, Customs reinvestigation considers the existence and magnitude of dumping contributed to the ability of SSI Singapore to offer a highly competitive price.

#### 5.3.2.4. Other factors that may have caused injury

Customs reinvestigation considered the other factors raised by interested parties that they claimed may have caused injury to the Australian industry.

##### *Quality of Schaefer MGBs*

Schaefer submitted that purchasers considered its MGBs were of superior quality.

Customs reinvestigation observes that the evidence supporting the importance of non-price factors in the decisions of purchasers to accept the SSI Singapore or SSI Australia price was based on the assertions of interested parties. Therefore, Customs reinvestigation must have regard to the evidentiary value of such information and weigh it against the verified information obtained.

##### *Substitutability between 120 litre and 140 litre MGBs*

Customs reinvestigation considered the claim that injury to the 120 litre MGB was not caused by Schaefer's sales of 240 litre MGBs into the Australian market, but rather the growth in the 140 litre MGB market.

Customs reinvestigation considers that there may be substitutability between the 120 and 140 litre MGB markets. Customs reinvestigation considers it is reasonable to expect that competitively priced 140 litre MGBs could have had an affect on the performance of Sulo and Nylex in relation to 120 litre MGBs. However, Customs reinvestigation considers it was also reasonable for the

original investigation to find that more aggressive competition to win new sales, to replace lost tender volumes in relation to 240 litre MGBs (and the customers' expectations of competitive price decreases for the other sizes), had an indirect impact on the other sizes of MGBs, particularly 120 litre MGBs.

#### *Competition between Australian industry members*

Customs reinvestigation considered the submissions of interested parties and comments by the TMRO in relation to the claim that prices in the Australian MGB market were set by the conditions of competition operating between Australian industry members and not Schaefer.

Related to this claim is the suggestion that WRS was the price leader in the market. Customs reinvestigation examined this claim and could not find evidence beyond the unverified observations of one party.

Further related to this claim is the TMRO's conclusion that "there is evidence that the Australian industry participants have at various times engaged in predatory pricing to attract a greater market share for themselves". Customs reinvestigation examined this conclusion against the evidence and determined that this conclusion appears to have arisen from unverified and uncorroborated claims contained in the visit report of an Australian industry participant in relation to sales of 140 litre MGBs.

Customs reinvestigation considers that notwithstanding the conditions of competition between Australian industry members, Schaefer has undercut the prevailing 240 litre MGB price in the tender market resulting in lost sales for the Australian industry members. The effect of Schaefer's tender pricing is observed in the Coffs Coast Municipal Councils tender where the Australian industry quoted at historically low prices to attempt to regain lost market share.

Customs reinvestigation has considered the TMRO's related observation that more market share has gone to WRS than Schaefer. Customs reinvestigation does not consider it determinative that WRS or Schaefer have captured more market share from Sulo or Nylex. The evidence indicates that Schaefer has increased its market share in the Australian market with MGBs at dumped prices, and that the resulting loss of market share to Australian industry members is material.

#### *Capacity problems*

Customs reinvestigation considered the TMRO's observation that industry participants queried the ability of local manufacturers to supply the market. In reviewing the available evidence, Customs reinvestigation noted that this observation was based on the comments of one Australian industry member that during times of high demand, Sulo, Nylex and WRS might sell MGB bodies to each other to meet contract and tender deadlines. Further, it was alleged that Sulo imported MGB bodies "as it could not make enough".

Customs reinvestigation noted that in all five tender contract quotes at least one member of the Australian industry submitted an offer. Customs reinvestigation observed that in only one case was the quote of one Australian industry member's offer to supply 240 litre MGBs rejected on the basis of an inability to

supply. However, in this case Customs reinvestigation noted that other Australian industry members manufacturing 240 litre MGBs did offer to supply the full volume requirement. Accordingly, Customs reinvestigation concludes that the Australian industry did not contribute to its own material injury by reason of an inability to supply.

#### *Influence of Victorian regulatory changes*

Customs reinvestigation notes that the change in regulatory arrangements in Victoria during 2003-4 required the elimination, where possible, of garbage containers that had to be lifted manually led to a surge in demand and sales for MGBs in that year.

Customs reinvestigation acknowledges that although this change may accentuate the magnitude of a reduction in overall sales following satisfaction of this demand, as the volume injury through lost sales relate to sales in NSW, the regulatory changes in Victoria are seen to be of limited relevance in this case.

#### **5.3.2.5. Material injury**

##### *Volume injury*

Customs reinvestigation agrees with Customs original investigation that the Australian industry manufacturing like goods suffered material injury in the form of volume injury through lost sales (tenders and contracts to supply under tenders) and a loss of market share.

Customs reinvestigation found that the market share of Malaysian MGBs for 2004/05 was almost six per cent, which was slightly higher than the figure calculated by Customs original investigation (approximately five per cent). As such the market share of Malaysian MGBs in 2004/05 rose from less than one per cent in both 2002/03 and 2003/04.

Customs reinvestigation considers that the volume injury suffered by the Australian industry was material and as such the Australian industry suffered material injury.

##### *Loss of market share in a growing market*

Customs reinvestigation considered Schaefer's submission that a percentage decrease in overall market share of incumbent market participants in an expanding market cannot be material injury.

Customs reinvestigation re-examined the market share data available in Customs original investigation. Customs original investigation determined that a gain of zero to almost eight per cent share of the "tender" contract market and a zero to approximately five per cent share of the total Australian 120 and 240 litre MGB market in one year (2004/05) is a material gain in market share. Customs reinvestigation considers that it is reasonable to conclude that the extent of the sales volume lost to dumped imports, and the lost market share represents material injury to the Australian industry.

### 5.3.3 Conclusion

Customs reinvestigation is satisfied that exports of MGBs from Malaysia at dumped prices undercut the prices of Australian industry members in four out of five tender contracts. In the case of the fifth tender contract the pressures imposed by the earlier sales of Malaysian MGBs at dumped prices caused the Australian industry to lower their prices to remain competitive. In this case, although not the lowest price, the dumped imports were again successful in displacing Australian industry's product.

Customs reinvestigation considers that the existence and degree of dumping has allowed the prices of Malaysian MGBs to undercut, or to be highly price competitive with, the Australian industry and consequently secure the five contracts examined above. Having regard to the key importance of price in awarding contracts to supply MGBs, Customs reinvestigation considers the dumping has enabled Malaysian MGBs to be priced at levels that directly resulted in lost sales in the five tender contracts. These lost sales amounted to almost 214,000 units and the associated loss of market share was about 5 per cent of the total Australian market.

Customs reinvestigation considers the Australian industry has not suffered price depression given the trend apparent in the combined weighted average Nylex and Sulo prices for MGBs. Customs reinvestigation considers the original investigation finding of price suppression is supported to the extent that the combined weighted average Nylex and Sulo prices for MGBs did not increase from 2003/04 to 2004/05 despite the increase in CTMS over the same period. Customs also considers the original investigation finding of reduced profits and profitability is supported to the extent that the combined results of Nylex and Sulo showed decreases in these indicators from 2003/04 to 2004/05.

Customs reinvestigation acknowledges that the tender market for MGBs is a market that can fluctuate significantly in volume terms due to the relatively unpredictable nature of council decisions to renew MGB fleets. Customs reinvestigation considers this places some limitations on the value of trend analysis.

Customs reinvestigation is satisfied that even after taking the non-price factors into account that dumping of itself has caused injury to the Australian industry in the form of lost sales and reduced market share, and that this injury is material.

## 6 ISSUE 3 – CONTINUED DUMPING & MATERIAL INJURY

The Minister has directed Customs to reinvestigate that exports of MGBs in the future from Malaysia are likely to be dumped and material injury to the Australian industry is likely to continue.

### 6.1 Original investigation

#### 6.1.1 Customs assessment in the original investigation

Customs original investigation observed that as Schaefer's sales of MGB bodies to Sulo Asia Pacific Enterprises Pte Ltd (Sulo AP) for re-supply to Sulo had ceased, it was reasonable to assume that Schaefer would seek new replacement markets.

The supply of 240 litre MGBs pursuant to the Coffs Coast Councils tender contract was yet to be fulfilled at the time of the conclusion of Customs original investigation. Customs original investigation concluded that the contract volume will be met at the contracted price as such causing further dumped MGBs to enter the Australian market.

Customs original investigation concluded that without measures in place it would be reasonable to expect that exports of dumped goods would continue and that this would cause a continuation of injury to the Australian industry.

### 6.2 TMRO Review

#### 6.2.1 Applications for Review

In seeking review of the Minister's decision Schaefer claimed that Customs original investigation failed to consider whether dumping may continue into the future. Schaefer observes that Customs original investigation merely noted whether imports, not imports at dumped prices, will continue in the future.

Schaefer further contends that the trends in the dumping margin calculations were away from dumping and that the dumping margins in the earlier part of the period arose because of increased costs.

Schaefer further contended that the conclusion of arrangements between SSI Singapore and Sulo AP indicated that there would not be exports of MGBs in the future from Malaysia that are likely to be dumped.

Schaefer further pointed to the lapsing of its Ryde Council tender as support for the proposition that it has no dumping intent.

#### 6.2.2 The TMRO report

The TMRO noted that Schaefer has since ceased tendering for contracts.

The TMRO concluded that the threat of continued dumping is limited by the falling demand for the 120 litre MGB and the growth of the 140 litre “squat” MGB, that is not produced by Schaefer.

The TMRO further observed that Schaefer could not be competitive in the smaller volume “non-tender contract” market.

### **6.3 Customs reinvestigation**

#### **6.3.1 Submissions to the reinvestigation**

Schaefer submitted that as it has ceased participating in the tender contract market, future exports of MGBs from Malaysia were not likely to be dumped.

Customs reinvestigation cannot have regard to Sulo and Nylex’s submission on this matter because it considered that the submission contained information that was not “relevant information” in terms of subsection 269ZZK(6).

Sulo and Nylex also submitted that there was a future threat of material injury from Schaefer exports to Australia (particularly at recent prices) because anti-dumping measures do not reflect current raw material HDPE input prices. In assessing future threat of material injury from dumped exports, Sulo and Nylex submitted that Customs reinvestigation should examine factors including, the ability to export the GUC to Australia, the willingness of the Australian market to purchase future Malaysian exports at presumably dumped prices and the historical uptake of the exported goods at dumped prices in Australia.

Schaefer submitted that its claim has nothing to do with “threat” of injury because Nylex and Sulo did not present a case based on threat of injury. Accordingly, Schaefer requested that Part 11 of Trade Measures Report No. 108 be reconsidered because it did not address the correct issues or evidence, namely that the Minister should have been satisfied that dumping would not continue on the basis that (a) the dumping margins at the start of the investigation period were generated by low factory throughput caused by equipment failures, (b) the trend of the dumping margin was reducing, (c) that Customs original investigation concluded that there was no dumping of reseller 240 litre MGBs in the last quarter of the investigation period and *de minimis* dumping of contractor 240 litre MGBs in the same last quarter, (d) the trend in Schaefer’s prices, and (e) Schaefer’s withdrawal from the tender contract market when the investigation was initiated.

Sulo and Nylex responded to these claims by pointing to Trade Measures Report No. 108 and confirmed that it reflected Sulo and Nylex’s position concerning the likely continuation of material injury. Further Sulo and Nylex observed that Customs original investigation found that the MGBs supplied pursuant to the Coffs Coast tender were yet to be delivered (as at the date of the Statement of Essential Facts of Customs original investigation).

In response to Schaefer’s suggestion that dumping margins were trending toward *de minimis*, Sulo and Nylex submitted that this was not possible to argue given the increasing raw material costs throughout the investigation period.

## 6.3.2 Customs reinvestigation assessment

### 6.3.2.1. Ceasing to tender as evidence of cessation of dumping

Customs reinvestigation considered Schaefer's submission that because it had ceased participating in the tender contract market (e.g. withdrawal from Ryde Council tender), it would not export like goods to Australia in the future (which may be at dumped prices).

Customs reinvestigation considers that Schaefer has the following attributes in respect of the Australian MGB market:

- customer service infrastructure either in Australia (SSI Australia) or capable of servicing Australian customers (SSI Singapore);
- after-sales assembly and service infrastructure in Australia;
- established supply chain network;
- market acceptance of its products; and
- favourable reputation.

Therefore, Customs reinvestigation considers that it would be relatively simple for Schaefer to resume tender and supply of MGBs in the Australian market.

Customs reinvestigation further considered Schaefer's submission that because it had ceased to supply MGB bodies to Sulo AP for resupply to Sulo, that it had lost an important supply channel to the Australian market. Customs reinvestigation considers that because of Schaefer's attributes in respect of the Australian MGB market (identified above), Schaefer is not precluded from establishing an alternative supply channel to the Australian "non-tender" market.

### 6.3.2.2. Recycled HDPE requirements of tenders

Customs reinvestigation considered Schaefer's submission to the SEF that because it uses only virgin HDPE in its MGB bodies, it would not be able to continue to export its Malaysian MGBs to Australian in the future. This is because, according to Schaefer, tenders require that there is a component of recycled HDPE in the MGB bodies.

Customs reinvestigation found that none of the five tenders at issue required a minimum proportion of recycled HDPE. Further, Customs reinvestigation found that Schaefer offers to manufacture its MGBs with a proportion of recycled HDPE.

### 6.3.2.3. Like goods known to be exported to Australia in the future

Customs reinvestigation observed that Trade Measures Report No. 108 observed that, as at the date of the SEF, there was a quantity of 240 litre Malaysian MGBs to be supplied under Schaefer's agreement with SMS for supply to the Coffs Coast Councils.

Customs reinvestigation confirms that it is reasonable to conclude that the contract volume will be met at the contracted price. Therefore, this will cause further dumped MGBs to enter the Australian market.

#### 6.3.2.4. Exporter uncompetitive in “non-tender” market

Customs reinvestigation considered Schaefer’s submission that it is uncompetitive in the “non-tender” market.

Customs reinvestigation observes that the Australian “non-tender” MGB market is significant in volume. Therefore, it is reasonable to conclude that an increased share of this market could be attractive to Schaefer in the future. Customs reinvestigation observes that Schaefer exported MGBs to WES during the investigation period for supply to the “non-tender” market.

#### 6.3.2.5. Effect of falling demand for 120 litre MGBs

Customs reinvestigation considered the TMRO’s conclusion that the threat of dumping is limited because of the falling demand for 120 litre MGBs.

Customs reinvestigation considers that notwithstanding the falling demand for 120 litre MGBs, the Australian industry has suffered material injury caused by the export from Malaysia to Australia of 240 litre MGBs at dumped prices.

#### 6.3.2.6. The trend toward *de minimis* margins

Customs reinvestigation considered Schaefer’s submission that dumping margins were trending toward *de minimis* toward the end of the investigation period.

Customs reinvestigation notes that a one-year investigation period is normally observed for the calculation of weighted average product margins. Customs has regard to shorter periods of time, often quarters, within the investigation period to ensure a reasonable approach to period matching. However Customs reinvestigation does not consider it can place much weight on dumping margins particular to those shorter periods because they can be influenced by many factors (e.g. seasons). The one-year approach is a reasonable means to ensuring fluctuating or ad-hoc factors or events are not driving unreasonable dumping assessments.

As Schaefer’s submission requires analysis of the dumping margin across a period that is less than the investigation period, Customs reinvestigation does not propose to draw any conclusions from the suggestion that quarterly dumping margins are trending toward *de minimis*.

#### 6.3.2.7. Dumping required to remain competitive

Customs reinvestigation considers that the five contracts won by Schaefer indicates that the Australian MGB market is highly price sensitive. The Australian industry participants demonstrated their propensity to lower prices to compete with the Malaysian MGBs that were sold at dumped prices. Therefore, Customs reinvestigation considers it reasonable to expect that any future exports of Malaysian MGBs may be at dumped prices to remain competitive.

### **6.3.3 Conclusion**

Customs reinvestigation is satisfied that exports of MGBs from Malaysia in the future may be at dumped prices and that continued dumping may cause further material injury to the Australian industry producing like goods.

## 7 FINDINGS AND RECOMMENDATION

Following its reinvestigation, Customs affirms that:

- there is a causal link between the dumped imports and injury to the Australian industry and the injury caused by dumping is material; and
- exports in the future from Malaysia are likely to be dumped and material injury to the Australian industry is likely to continue.

In relation to the dumping margin, Customs reinvestigation makes a new finding - that the dumping margin is 6.47 per cent.

Customs recommends that the dumping duty notice published on 5 June 2006, with effect from 27 February 2006, be varied so that it is taken to have effect as if different variable factors had been fixed.

Export prices and normal values will not be published in this report as they may reveal confidential information, but are attached in **Confidential Attachment 1**.

## 8 EVIDENCE RELIED UPON

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

- information provided to Customs original investigation by Australian industry, importers, exporters, manufacturers, other parties and Customs commercial database; and
- submissions to the TMRO and to the reinvestigation as far as they related to the relevant information or conclusions based on the relevant information.

## 9 APPENDIX AND CONFIDENTIAL ATTACHMENT

**Appendix 1** Economic condition of the industry

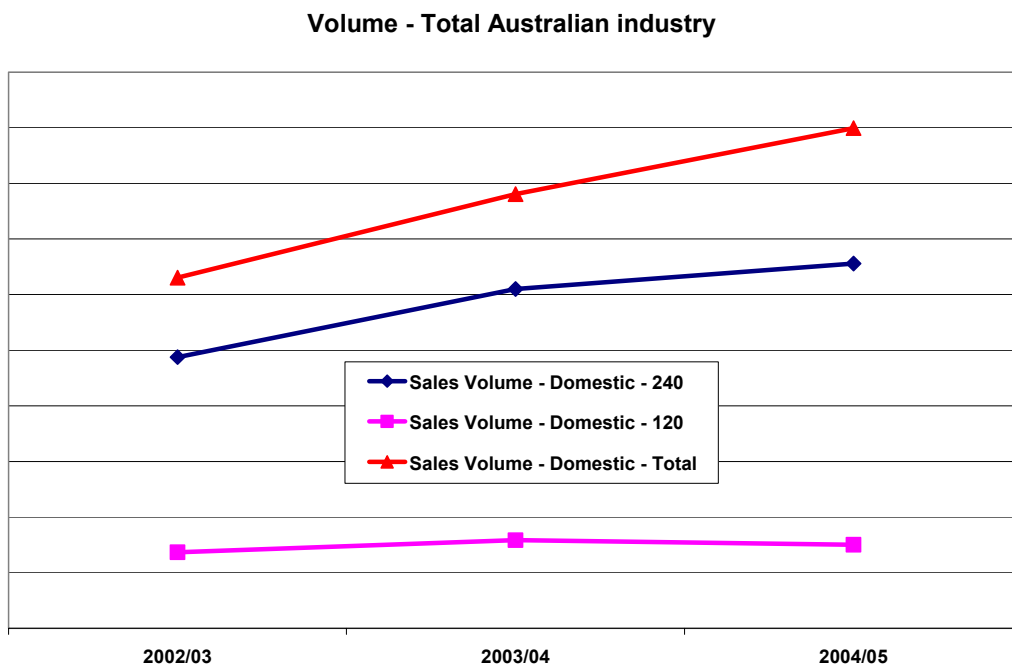
**Confidential Attachment 1** Export prices and normal values

## APPENDIX 1 – ECONOMIC CONDITION OF THE INDUSTRY

With the exceptions of the charts for sales volume and market size and share, the following charts are based on verified financial data obtained from Nylex and Sulo, after the Customs reinvestigation correction to the data. In the case of the sales volume chart for the Australian industry, this includes estimates of the sales made by WRS and OSGS. In the case of the market size and share charts, these include the WRS and OSGS sales volume estimates and verified sales volumes for sales of MGBs exported to Australia from Malaysia.

### Sales volume

The following chart shows the combined Australian industry sales volumes for MGBs during the injury analysis period.

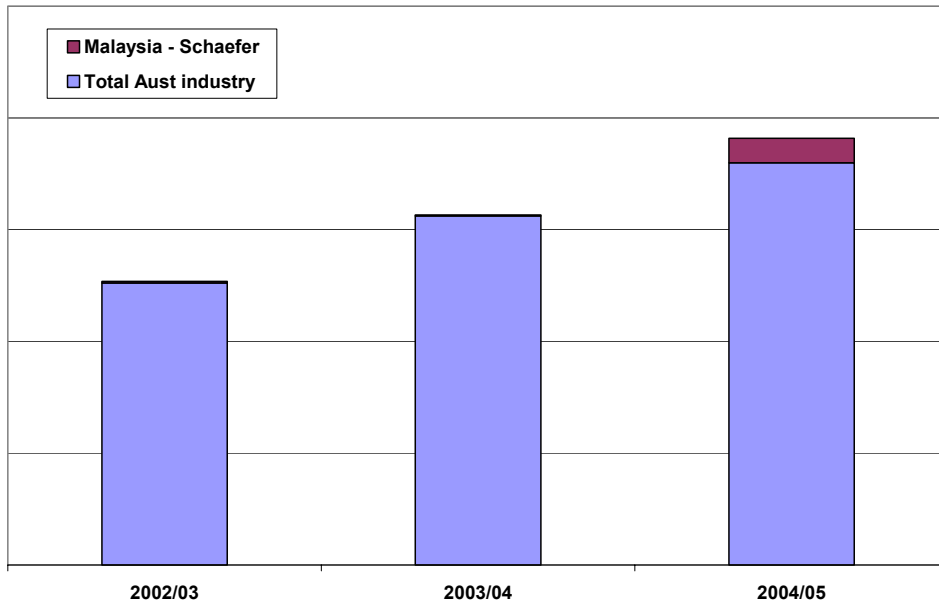


Customs reinvestigation noted the Australian industry sales volume for 120 litre MGBs remained relatively stable over the three years, while 240 litre MGB and total MGB sales increased each year.

### Market Size and Share

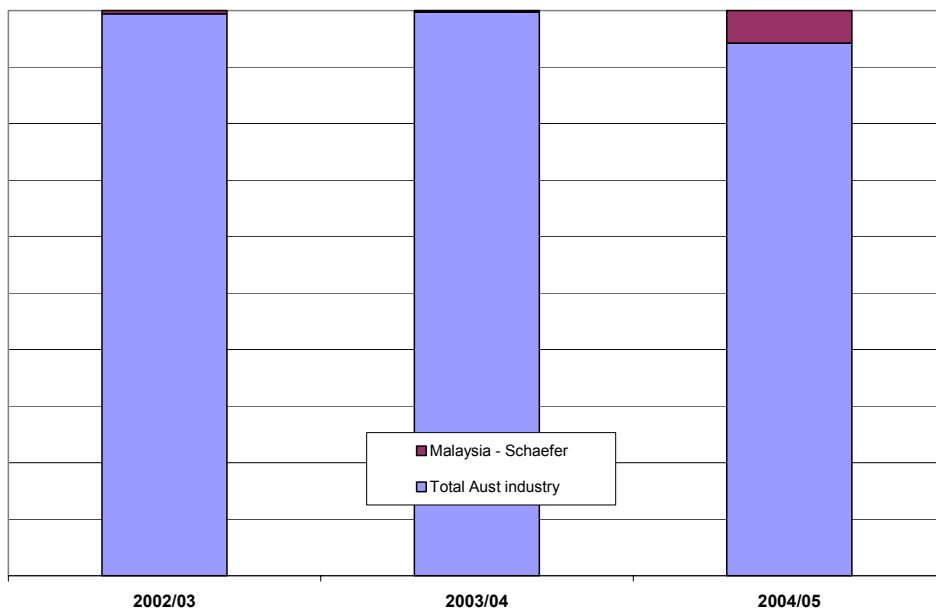
The chart below shows the total Australian market size and the relative volumes accounted for by the combined Australian industry MGBs and the imported MGBs from Malaysia.

**Market Size and Share**



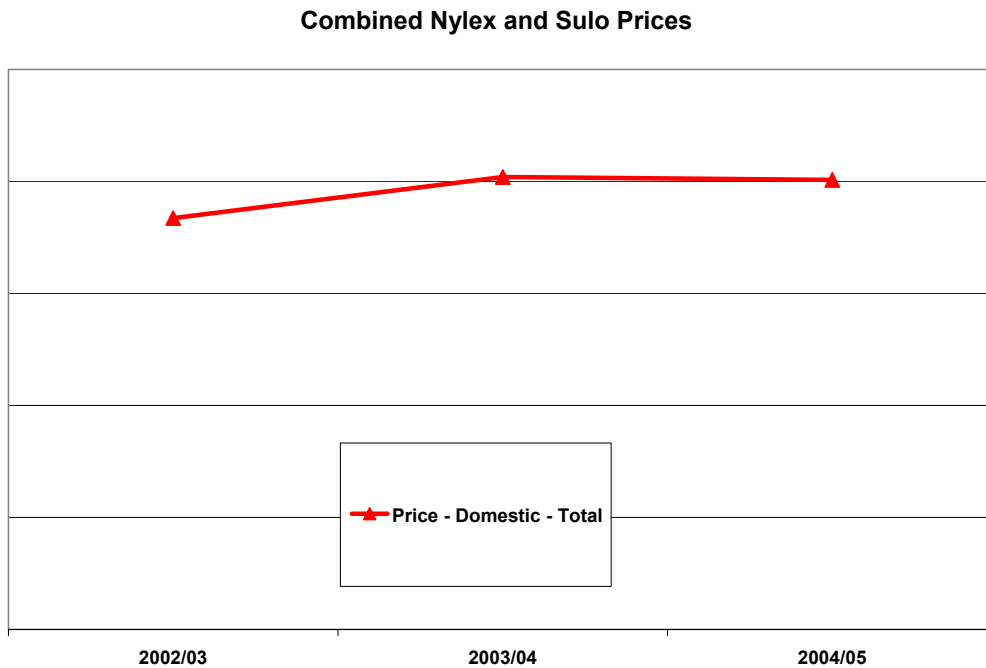
The following chart is based on the same data as that for the previous chart, but is expressed in purely market share terms.

**Market share**



## Prices

The following chart shows the combined weighted average unit prices for Nylex and Sulo MGBs over the injury analysis period.

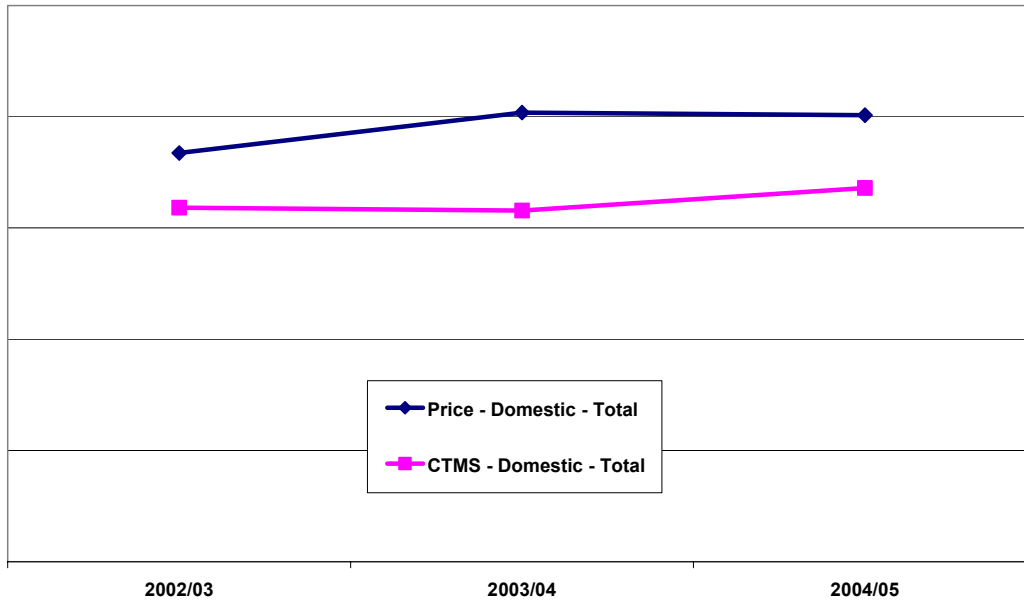


Customs reinvestigation notes the weighted average price for total Nylex and Sulo MGBs increased from 2002/03 to 2003/04, and remained relatively stable the following year.

## Unit price compared with unit costs

The following chart shows a comparison of the combined weighted average Nylex and Sulo unit selling prices for MGBs with the combined weighted average Nylex and Sulo unit CTMS for MGB, over the injury analysis period.

### Combined Nylex and Sulo unit price and costs - All

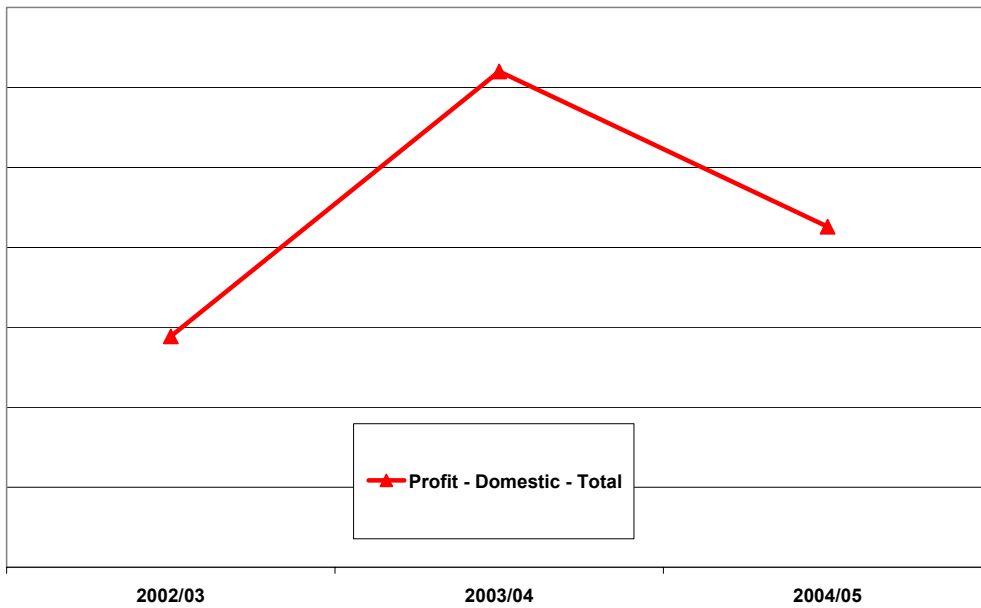


Customs reinvestigation noted that unit CTMS decreased from 2002/03 to 2003/04 and then increased the following year. The unit selling prices increased from 2002/03 to 2003/04 and remained stable the following year. Price increased as CTMS decreased from 2002/03 to 2003/04, and CTMS increased the following year while price remained stable.

### Profits and profitability

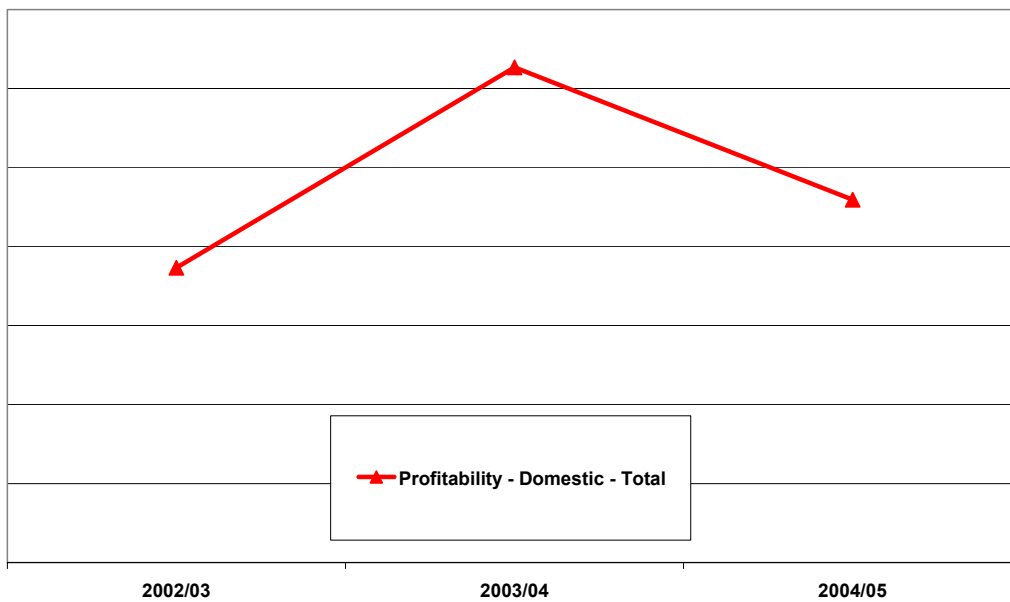
The following charts show the combined total profits, and combined weighted average profitability, for Nylex and Sulo MGBs over the injury analysis period.

### Combined Nylex and Sulo Profits



Customs reinvestigation notes that the profit for total Nylex and Sulo MGBs increased from 2002/03 to 2003/04, and decreased the following year to a point that is greater than in 2002/03.

### Combined Nylex and Sulo Profitability



Customs reinvestigation notes that the profitability for total Nylex and Sulo MGBs increased from 2002/03 to 2003/04, and decreased the following year to a point that is greater than in 2002/03.

### Other factors

Customs was satisfied in its original investigation that Nylex and Sulo experienced a reduced return on investment in the period examined, although it found no evidence of a reduced ability to raise capital by these entities. It also found that the capacity utilisation of Nylex and Sulo fell in 2004/05. In respect of other factors, it found the results were inconclusive to demonstrating injury to the Australian industry.

Having regard to available evidence, Customs reinvestigation considers it was reasonable for the original investigation to make such findings in relation to other injury factors and it has found no reasons to draw alternative conclusions.

## CONFIDENTIAL ATTACHMENT 1 – EXPORT PRICES AND NORMAL VALUES