



CUSTOMS ACT 1901 - PART XVB

TRADE MEASURES REPORT NO.50

SODIUM METABISULFITE

**EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA AND THAILAND**

APPLICATION FOR DUMPING DUTIES

4 March 2002

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ABBREVIATIONS

ABS	Australian Bureau of Statistics
ACDN	Australian Customs Dumping Notice
CEO	Chief Executive Officer of Customs
CFR	cost and freight
China	People's Republic of China
CIF	cost, insurance and freight
Cowin	Cowin Industry Co., Ltd
CTMS	cost to make and sell
Customs	Australian Customs Service
DFTT	Department of Foreign Trade, Thailand
FOB	free on board
GUC	goods under consideration
Incitec	Incitec Ltd
Minister	Minister responsible for Customs
NIP	non-injurious price
PAD	preliminary affirmative determination
s.	section, sub-section or paragraph
SBS	sodium bisulfite
SEF	statement of essential facts
SMBS	sodium metabisulfite
the Act	<i>Customs Act 1901</i>
TSC	Thai Sulphites & Chemicals Co., Ltd
USP	unsuppressed selling price
WTO	World Trade Organisation

1. SUMMARY

1.1 Background

This report explains the result of an investigation by Customs into the alleged dumping of sodium metabisulfite (SMBS) exported to Australia from the People's Republic of China and Thailand.

Customs initiated the investigation on 12 September 2001 following an application by Incitec Ltd (Incitec), the Australian producer of SMBS.

The goods under consideration (GUC) are the chemical product SMBS. The product comes in a number of grades—typically technical, food and photographic. Imported SMBS is packaged in both bulk bags (one tonne or more) and 25kg bags. The goods are imported in solid (crystallised powder) form. The goods are classified to tariff item 2832.10.00 statistical code 25 titled 'Sodium sulphites' with a free duty rate.

Customs found that the Australian industry does not produce a like good to the imported photographic grade of SMBS. Therefore photographic grade SMBS is not part of this investigation.

A statement of essential facts in relation to the investigation was placed on the public record on 18 January 2002.

A preliminary affirmative determination (PAD) was made by Customs in relation to exports of SMBS from China on 4 February 2002 that allowed securities to be imposed on or after that date.

1.2 Dumping

The period for investigation of dumping was 1 April 2000 to 31 August 2001.

For Thailand, Customs found that two exporters—Thai Sulphites and Chemicals Co., Ltd (TSC) and Cowin Industry Co., Ltd (Cowin)—exported SMBS to Australia during the investigation period.

Customs determined normal values for TSC using TSC's domestic selling prices for SMBS in Thailand under s. 269TAC(1). Export prices for TSC were determined under s. 269TAB(1)(a).

Customs determined normal values for Cowin Industry Co., Ltd (Cowin) using TSC's domestic selling prices of SMBS in Thailand under s. 269TAC(1). Export prices for Cowin were determined under s. 269TAB(1)(c) having regard to all the circumstances of the exportations.

For China, Customs found that there were thirteen exporters of SMBS to Australia during the investigation period. None of these exporters cooperated in the investigation.

Therefore, for goods exported from China Customs determined normal values under s. 269TAC(6) having regard to all relevant information, including verified data from the Australian industry, Thai exporter (TSC) and Australian importers. Export prices were determined under s. 269TAB(3) having regard to all relevant information.

Customs found that:

- Imports of food and technical mining grades of SMBS from TSC of Thailand were not dumped.
- Imports of SMBS from Cowin of Thailand were dumped and the margin was not negligible in terms of s. 269TDA(1).
- The volume of dumped imports from Thailand was negligible in terms of s. 269TDA(3).
- Imports of SMBS from China were dumped.
- The volume of dumped imports from China was not negligible in terms of s. 269TDA.

Using the weighted average method, Customs calculated a dumping margin of 25.9% for SMBS exported to Australia by Cowin and 83% for SMBS exported to Australia by Chinese exporters.

1.3 The Australian market

The SMBS market in Australia is supplied by:

- Incitec;
- imports from the nominated countries (Thailand and China);
- imports from a number of other countries, including Italy and Germany.

There are four main market segments for SMBS, which correspond broadly to the three grades of SMBS:

- the photographic industry, which uses photographic grade SMBS (required to have low levels of chloride, among other things);
- the food industry, which uses food grade SMBS (in accordance with food regulatory requirements—refer section 3.4.1);
- the mining industry, which uses technical grade SMBS;
- other end-users, such as the tanning industry and chemical manufacturers, who mostly use technical grade SMBS.

Customs estimates the Australian SMBS market (all grades) for the 12 months 1 July 2000 to 30 June 2001 was about 7 000 tonnes.

1.4 Material injury

Customs examined the Australian market from 1 January 1998 for the purpose of injury analysis. Customs found that the Australian industry suffered injury through:

- price undercutting
- price depression
- price suppression

- loss of profits and profitability
- inadequate return on investment
- under-utilisation of capacity.

Customs is satisfied that the Australian industry suffered material injury from some cause or causes.

1.5 Causal link

Customs considered the claims of all interested parties, as detailed in sections 8.1 and 8.2.

Customs is satisfied that:

- Since exports of the goods by TSC were determined to be not dumped, dumping by TSC could not have caused material injury to the Australian industry producing like goods.
- Since the volume of dumped imports from Thailand was calculated to be negligible in terms of s. 269TDA(3), these imports were not a cause of material injury to the Australian industry producing like goods.
- Dumped imports from China caused material injury to the Australian industry producing like goods.

1.6 Continuation of dumping and material injury

Customs is not satisfied that future exports of SMBS from Thailand are likely to be dumped to the extent of causing material injury to the Australian industry in the near future, as there is no evidence that the situation in respect of such exports is likely to change substantially.

Customs is satisfied that future exports of SMBS from China are likely to be dumped to the extent of causing material injury to the Australian industry in the near future, as there is no evidence that the situation in respect of such exports from China is likely to change substantially.

1.7 Conclusion

Customs is satisfied that the Australian industry suffered material injury caused by dumped imports of SMBS from China.

Customs recommends that the Minister take anti-dumping action against exports of SMBS from China.

Subject to the Minister's determination in respect of export prices, normal values and dumping, Customs will terminate the investigation as it relates to Thailand.

Details of Customs' recommendations are at Chapter 11.

2. INTRODUCTION

2.1 Purpose of investigation

The *Customs Act 1901* (Part XVB) and the *Customs Tariff Anti-Dumping Act 1975* protect Australian industries from dumping and from imported goods which have benefited from certain kinds of government assistance.

Anti-dumping and countervailing measures are imposed where the dumping or subsidisation has caused, or threatens to cause, material injury to an Australian industry producing like goods.

The glossary at appendix 1 contains more information about the legislation.

2.2 Procedures

If Customs initiates an application, s. 269TEA of the Act requires that it conduct an investigation and report to the Minister by day 155, unless the Minister has (under s. 269ZHI) extended the time for placing the SEF on the public record. The report must recommend whether dumping and countervailing duty notices should be published; and the level of duty payable.

The report also recommends whether measures should be imposed on any like goods not covered by the application and imported between the start of the investigation and ending 20 days after the statement of essential facts was placed on the public record.

The recommendation to the Minister is based on:

- the application;
- submissions to which the CEO had regard when formulating the statement of essential facts;
- the statement of essential facts;
- any submission made in response to that statement that was received within 20 days of the statement being placed on the public record by Customs; and
- any other relevant matter.

Customs is not obliged to consider submissions in response to the statement of essential facts that are received more than 20 days after the statement was placed on the public record.

Customs must clearly state the material findings of fact on which any recommendation in this report is based and provide particulars of the evidence relied on to support those findings.

A statement of facts and evidence relied upon by Customs is at appendix 2.

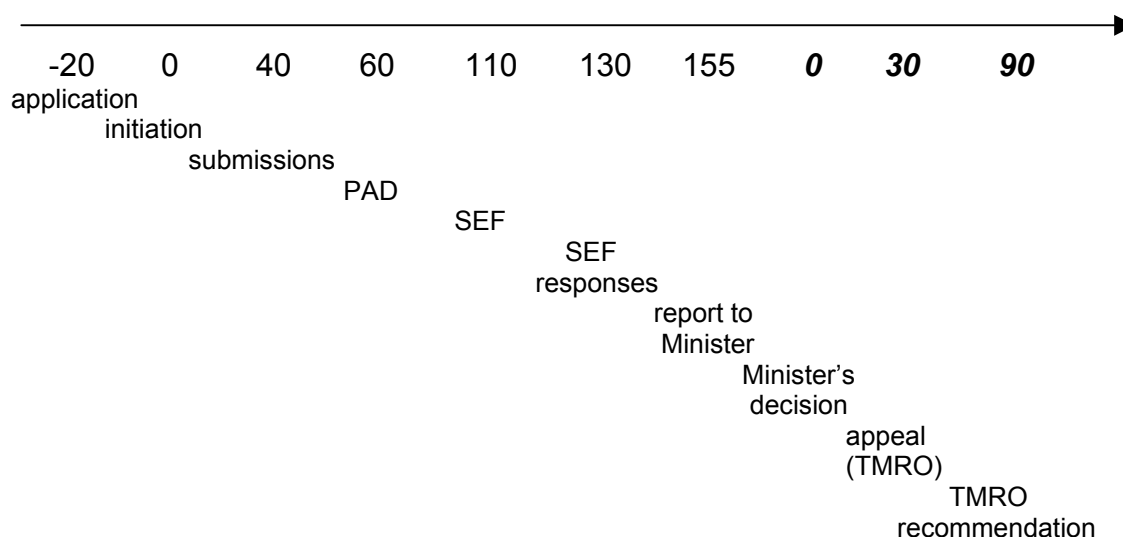
In compiling the report and recommendations, Customs examines submissions and undertakes on-site verifications in Australia and overseas where necessary. Interested parties participate in the investigation process by lodging submissions at various stages.

On the basis of this report the Minister will make a decision on whether measures should be imposed. If measures are imposed, Customs is responsible for the administrative arrangements.

Interested parties have 30 days after the publication of the Minister's decision in which to ask the Trade Measures Review Officer (TMRO) to review the decision. The contact address is:

Trade Measures Review Officer
 Robert Garran Offices
 National Circuit
 BARTON ACT 2601
 Phone: +61-2-6250 6220
 Fax: +61-2-6250 5914

A time-line (days) summarising the usual investigation process is shown below.



Apart from a PAD, where day 60 is the earliest possible day for publishing, all other days are the statutory deadlines. The bold and italicised days in the summary are after Customs' report has been presented to the Minister. Note that s. 269ZHI of the Act provides that the Minister may extend the period in which the SEF must be placed on the public record if it is reasonable to do so. In this investigation, the Minister extended the period for placement of the SEF on the public record by 18 days.

2.3 Customs' approach to the investigation

The key issue before Customs is whether dumping is causing or threatening to cause material injury to the Australian industry producing like goods.

If the answer is 'no', Customs cannot lawfully recommend anti-dumping action. If the answer is 'yes', Customs will normally recommend action.

Customs considers four subsidiary questions in deciding whether to recommend that the Minister take anti-dumping action.

(i) Have the goods in question been dumped?

If the goods have not been exported at dumped prices, then dumping cannot be causing or threatening material injury.

(ii) What has been the recent economic performance of the industry?

Dumping cannot be causing injury if the Australian industry in question shows no signs of being injured. Customs examines the economic condition of the industry to identify any signs that the industry has been injured.

(iii) Has dumping caused material injury?

Customs evaluates the industry's performance to identify any other sources that may have caused injury to the industry. To recommend anti-dumping measures Customs must be satisfied that the dumping, of itself, has caused material injury to the industry.

(iv) Is there a continuing threat of material injury by future dumping?

In some (rare) cases dumping may have indeed caused, but clearly no longer threatens to cause, (continuing) material injury. In such cases anti-dumping action would not be warranted. On the other hand, dumping may not as yet have caused material injury but may threaten to cause material injury in the future. In such cases Customs recommends action.

If Customs decides that it can lawfully recommend anti-dumping action, it then considers what form (eg dumping duties, undertaking) that action should take.

2.4 Background to the investigation

On 12 September 2001, following an application by Incitec (on behalf of the Australian industry), Customs initiated an investigation into the alleged dumping of SMBS exported to Australia from the People's Republic of China and Thailand. Incitec is the sole producer of SMBS in Australia.

The application alleged that injury was being caused to the Australian industry through:

- price undercutting
- price depression
- price suppression
- loss of profits and profitability
- reduced return on investment
- under-utilisation of capacity.

The period of investigation for the purposes of determining dumping was 1 April 2000 to 31 August 2001. Customs examined details of the Australian market from 1 January 1998 for injury analysis.

As required by s. 269TEA(2), this report, to the extent practicable, extends to like goods not covered by the application but imported into Australia during

the period from 12 September 2001 (date of initiation) and 7 February 2002 (20 days after the SEF was placed on the public record).

2.5 Public notifications

2.5.1 Initiation

Customs announced the initiation of the investigation by notice published in the *Australian Financial Review* on 12 September 2001 and by ACDN No. 2001/53. The embassy of each of the nominated countries was advised of the initiation.

2.5.2 Statement of essential facts

In accordance with s. 269TDAA of the Act, on 18 January 2002 Customs placed on the public record a SEF. The statement described the facts upon which Customs proposed to base its recommendations to the Minister in relation to the investigation. Interested parties were given the opportunity to respond to the statement. Customs received responses to the SEF from the applicant, Incitec, and the Thai exporter, TSC. Issues raised in the responses are addressed in this report.

2.5.3 Preliminary affirmative determination

Customs made a preliminary affirmative determination (PAD) in relation to exports of SMBS from China effective on or after 4 February 2002. This determination was notified publicly in ACDN No. 2002/5. A copy of the ACDN is at appendix 3.

Customs made the PAD because it was satisfied, based on its investigation to that time, that exports of dumped SMBS from China had caused material injury to the Australian industry. Customs considered that the imposition of securities was warranted to ensure that further injury was not caused to the Australian industry while the investigation was being completed.

2.5.4 Public record

A public file in relation to this investigation is held by the Trade Measures Branch office management at Customs House, 5 Constitution Avenue, Canberra ACT 2601.

The file includes copies of the:

- non-confidential application by the Australian industry;
- non-confidential version of each submission received during the investigation;
- non-confidential version of Customs' reports on its visits to the Australian industry, importers and the Thai exporter; and
- PAD and SEF.

The file is available for viewing and copying by all interested parties by contacting office management staff on (02) 6275 6547.

2.5.5 Internet

Customs dumping notices, the SEF and this report are available on Customs Internet homepage at <http://www.customs.gov.au/notices/index.htm>

3. THE GOODS UNDER CONSIDERATION

3.1 The goods under consideration

The goods under consideration (GUC) are the chemical product SMBS. The market in Australia distinguishes three grades: technical, food and photographic. The SMBS exported to Australia is packaged in both bulk bags (one tonne or more) and 25kg bags. The goods are imported in solid (crystallised powder) form.

3.2 Tariff classification

The goods are classified to tariff item 2832.10.00 statistical code 25 titled 'Sodium sulphites' with a free duty rate.

Customs found that modest amounts of imports of SMBS were entered against tariff item 2832.20.00 statistical code 26 titled 'Other sulphites', also with a free duty rate.

Customs notes that both these classifications include chemicals other than SMBS, such as sodium sulphite and sodium hydrosulphite.

3.3 Imports

3.3.1 Nominated countries

The applicant nominated Thailand and the People's Republic of China (China) as the countries against which anti-dumping action was sought.

3.3.1.1 Thailand

Customs identified two exporters of SMBS to Australia from Thailand during the investigation period. These were:

- Thai Sulphites & Chemicals Co., Ltd (TSC)
- Cowin Industry Co., Ltd (Cowin)

3.3.1.2 China

Customs identified thirteen possible exporters of SMBS to Australia from China during the investigation period.

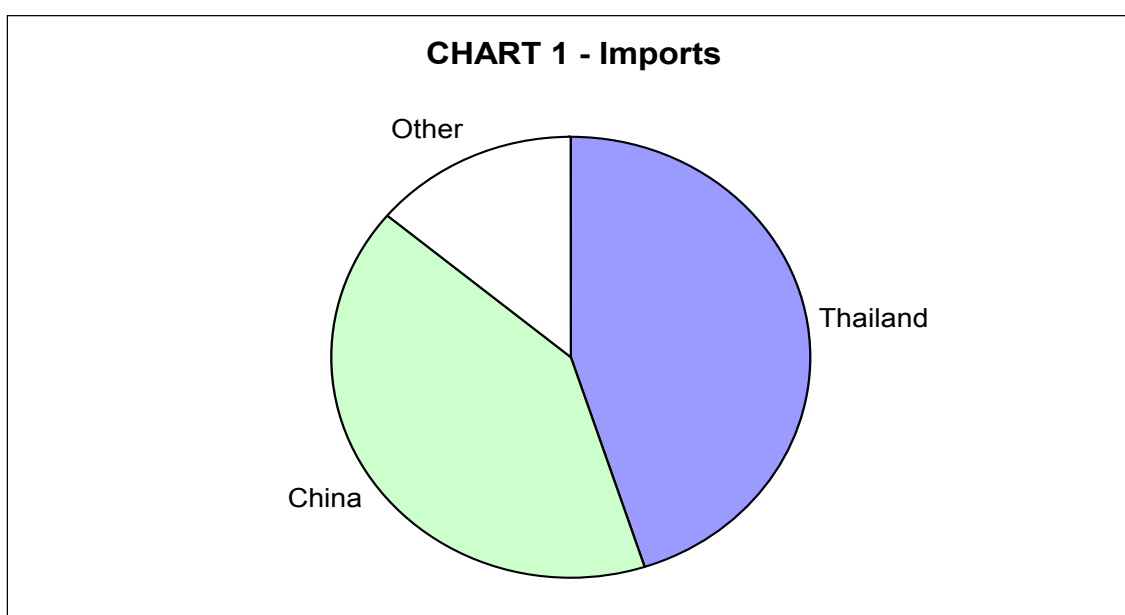
3.3.2 Importers

Customs identified that there were eleven importers of SMBS from China or Thailand during the investigation period. Some of these importers imported from both countries. Customs obtained information from all importers and visited the seven largest importers to verify data. A list of the importers is included in confidential appendix 4.

3.3.3 Volume of imports

To determine the volume of imports during the investigation period Customs initially turned to its commercial database. However, Customs found this source of data presented some difficulties because imports of SMBS had been entered under two tariff classifications and both contained sulphites other than SMBS (see section 3.2 above). Further, some importations that contained SMBS and sodium sulphites were entered simply as sodium sulphite. Customs therefore used other data sources, including verified information from TSC and data from Australian importers of Thai and Chinese SMBS, to supplement the commercial database.

Customs estimated that the volume of SMBS imported during the 17 months of the investigation period was about 3 200 tonnes. Chart 1 depicts the proportions of imports from the nominated countries.



Details relating to imports are at confidential appendix 4.

3.4 Product information

3.4.1 Use

SMBS has the appearance of white free flowing crystals and performs its function by providing a convenient source of sulphur dioxide within a solid (crystalline powder) medium.

The market in Australia for SMBS is driven primarily by the mining industry, which uses SMBS as a flotation agent, reducing agent and cyanide destruction agent.

SMBS is also used in a number of other industries including food, photographic, water treatment, pharmaceutical and tanning.

As mentioned earlier, three grades of SMBS are commonly referred to in the Australian market—technical, food and photographic. These grades are distinguished by the particular specifications required by end users.

- Photographic grade is required by customers to have low levels of impurities, particularly chloride, iron, and heavy metals (lead). As such, it is usually the purest of the three grades.
- Food grade must meet food regulatory requirements in respect of the proportion of heavy metals (< 5 parts per million) and iron (< 10 parts per million) in the material.
- Technical grade usually contains a higher proportion of heavy metals and iron than food grade and is the cheapest grade.

There were imports of all three grades from Thailand during the investigation period, but Customs detected imports of only technical and food grades from the People's Republic of China.

Imported SMBS may be packaged in 25kg bags or bulk bags (one tonne or more). For smaller users, particularly the non-mining market segment, these bags may be repackaged into smaller sizes.

3.4.2 Raw materials and the manufacturing process

SMBS is produced using either soda ash (natural or synthetic) or caustic soda as raw material.

In brief, the raw material is combined with a gas stream of sulphur dioxide in a reactor. (The sulphur dioxide is produced from sulphur). By controlling the pH level of the reaction SMBS is produced. The output is centrifuged and then dried to remove moisture. The final product is a fine, crystalline powder.

Raw material cost is a major component in the cost to make SMBS.

4. THE AUSTRALIAN INDUSTRY

Section 269TB(1) of the *Customs Act 1901* specifies that an application for publication of a dumping duty notice may be lodged where, among other things, there is, or may be established, an Australian industry producing like goods.

4.1 Produced in Australia

Subsections 269T(2) and 269T(3) of the Act specify that for goods to be regarded as produced in Australia:

- they must be wholly or partly manufactured in Australia; and
- where the goods have been partly manufactured in Australia, then at least one substantial process in the manufacture of the goods must be carried out in Australia.

The applicant, Incitec, claimed it produced SMBS in Australia. Customs inspected the company's manufacturing facilities and observed the production of SMBS. Customs verified product information, including the cost to make, provided by Incitec in its application. Customs is satisfied that SMBS is wholly manufactured in Australia.

Customs is satisfied that the conditions of s 269T(2) and (3) are met.

4.2 The Australian industry

4.2.1 Producers

In its application, Incitec claimed it was the only Australian manufacturer of SMBS. The company stated that it commenced production of SMBS in 1997.

During the investigation Customs contacted importers and end-users of SMBS in Australia and did not find evidence that suggested there are other Australian producers of SMBS.

4.2.2 Support for the application

Section 269TB(6) of the Act requires that the application be supported by a sufficient part of the Australian industry producing like goods. The application is taken to be supported by 'a sufficient part of the Australian industry' when the person(s) who produces or manufactures the goods in Australia and who supports the application:

- accounts for at least 50 per cent of the total production of that part of the domestic industry that have commented; and
- accounts for at least 25 per cent of the total production of like goods.

The applicant is the only Australian producer.

Customs is satisfied the requirements of s. 269TB(6) have been met.

4.2.3 Incitec's structure and manufacturing

Incitec is a public company that is 76 per cent owned by Orica Investments Pty Ltd (Orica) and 21 per cent by Acehill Investments Pty Ltd.

Incitec operated three business units throughout 2001.

- Incitec Fertilizers—manufacture, importation and marketing of fertilizer products.
- Incitec Industrial Chemicals—manufacture and marketing of nitrogen and sulphur based industrial chemicals (including SMBS).
- Crop Care—manufacture and marketing of crop protection chemicals, through Crop Care Australasia Pty Ltd (a joint venture company with Orica).

Incitec manufactures SMBS at its Port Kembla manufacturing site in NSW.

Incitec employs about 800 people in total but only a small number are involved with SMBS production. The company's total revenue in the 1999-2000 financial year was \$960.4 million. Revenue from SMBS is a minor part of total revenue.

4.3 Like Goods

Section 269T(1) of the Act defines 'like goods' as follows:

like goods, in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

In considering whether Australian manufactured goods are physically the same or have the same essential characteristics as the GUC, Customs may have regard to factors including:

- physical and performance characteristics
- end use
- substitutability
- price

Physical characteristics could include chemical composition, quality, appearance, purity, inputs and production process.

Customs recognises that no single factor is conclusive. However, slight differences in presentation or other non-essential characteristics do not preclude a finding that goods are like goods.

Customs invited submissions from, and considered the views of, interested parties regarding whether the different grades of SMBS should be regarded as like goods. These submissions included responses to an Issues Paper on the subject distributed to interested parties by Customs in November 2001 and to the SEF.

Customs notes that the market generally distinguishes three grades of SMBS: technical, food and photographic. Each grade primarily serves a particular market segment. The GUC included imports of each of these grades.

All parties agree that the chemical composition of SMBS, in particular the type and level of impurities, is significant and distinguishing in the eyes of those that make, buy, sell, use or regulate the use of SMBS. For example:

- Users of photographic grade SMBS specify type and level of impurities (eg chloride, heavy metals and iron) that must not be exceeded. Permitted levels of impurities are generally lower than those for food grade requirements.
- Regulatory requirements for food grade SMBS specify levels of impurities (eg heavy metals and iron) that must not be exceeded.
- Users of technical grade SMBS are primarily concerned that a minimum sulphur dioxide level is met.

These characteristics are linked with the performance expectations of the product and are reflected in relative pricing. In theory a higher grade of SMBS may be substituted for a lower grade (eg food grade for technical grade). Customs found evidence of substitution of food grade for technical grade and substitution between technical grade and TSC's technical mining grade but found no evidence of substitution of photographic grade for other grades.

Customs found no significant difference in chemical composition, manufacturing process, quality and appearance between Australian manufactured food grade and imported food grade. In addition, there is considerable degree of substitution in the market. On this basis Customs considers it reasonable to conclude that Australian manufactured food grade has the same essential characteristics as imported food grade and is therefore a like good.

For the same reasons Customs considers it is reasonable to conclude that the Australian manufactured technical grade has the same essential characteristics as imported technical grade, other than TSC's technical mining grade, and is therefore a like good.

TSC claimed that its technical mining grade is a special formulation for use in the mining industry. However, Customs found that the TSC technical mining grade has the same end use in mining and non-mining industries and is substituted for the locally manufactured technical grade SMBS in those industries. Customs considers that there are reasonable grounds to conclude that Australian manufactured technical grade has the same essential characteristics as TSC's technical mining grade and is therefore a like good.

Incitec claims that its plant has the ability to produce a grade of SMBS suitable for the photographic industry. On the evidence available, Customs found essential differences between the photographic grade imported from TSC and the locally manufactured grades of SMBS. These essential differences include chemical composition (eg type and level of impurities), production process, customer perceptions, end use, substitutability and price.

On the available evidence, Customs concludes that Incitec has been unable to establish that it can manufacture SMBS to the specification acceptable to the photographic industry.

While having due regard to the party's submissions, Customs concludes that the Australian industry does not manufacture a like good to the imported photographic grade.

4.4 Conclusion

Based on its verification of information provided by Incitec and inspection of Incitec's plant at Port Kembla, Customs is satisfied that there is an Australian industry producing like goods to the GUC, with the exception of photographic grade imported from TSC in Thailand, and that at least one substantial process in the manufacture of the goods is carried out in Australia.

Accordingly, the requirements of s. 269T(2), (3) and (4) of the Act have been met.
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5. THE AUSTRALIAN MARKET

5.1 Market structure

The SMBS market in Australia is supplied by:

- Incitec;
- imports from the nominated countries (Thailand and China);
- imports from a number of other countries including Italy and Germany.

There are four main market segments for SMBS, which correspond broadly to the three grades of SMBS:

- the photographic industry, which uses photographic grade SMBS;
- the food industry, which uses food grade SMBS;
- the mining industry, which uses technical grade SMBS; and
- other end-users, such as the tanning industry and chemical manufacturers, who mostly use technical grade SMBS.

There are two channels of distribution of SMBS—direct and indirect.

Incitec sells directly to larger end use customers. Since Incitec has a minimum sale volume of one metric tonne, smaller end users are unable to purchase directly from it. Incitec also sells to distributors, including importers.

Most SMBS from overseas is imported by distributors, although a large end-user of photographic grade in Australia imports directly.

Distributors usually have no minimum purchase size requirement and may sell in large volume (eg 20 tonnes or more to the mining industry) or small volume (eg in kilograms to the food industry). Distributors may repackage SMBS purchased from Incitec or imported into smaller quantities, sometimes under different brands, and sell either direct to end-users or through retailers.

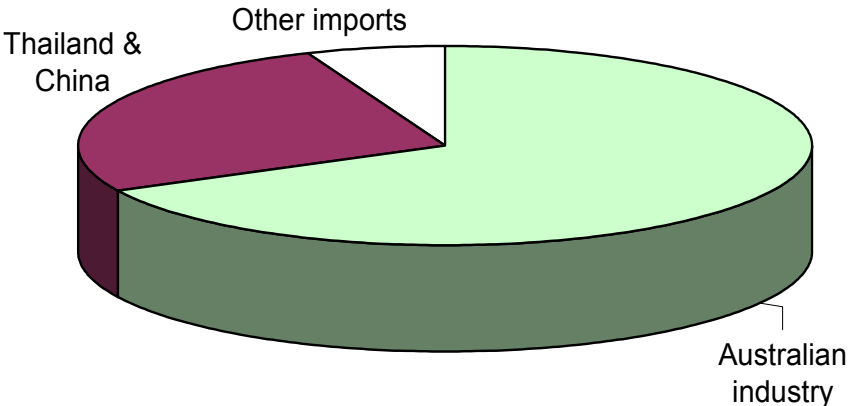
5.2 Market size

To determine market size Customs used verified sales figures wherever possible. This included figures for the Australian industry and importers of Thai and Chinese SMBS. For imports from other countries, Customs used import information from Customs' commercial database.

Customs estimates that the Australian SMBS market (all grades) for the 12 months 1 July 2000 to 30 June 2001 was about 7 000 tonnes.

The market share of the respective suppliers is depicted in the following chart.

CHART 2 - Market share



Details relating to market size and share are at confidential appendix 5.

6. THE DUMPING INVESTIGATION

Dumping occurs when the export price of a product is less than the normal value of the same (or similar) product in the domestic market of the country of export. This section explains the results of Customs' investigation of this aspect.

6.1 Thailand

Each of the two Thai exporters was sent an exporter's questionnaire and invited to complete and return the questionnaire to Customs. TSC duly completed the questionnaire and returned it. Cowin did not cooperate with the investigation.

6.1.1 Thai Sulphites & Chemicals Co., Ltd

6.1.1.1 Export price

TSC exported photographic, food and technical grades of SMBS to Australia during the investigation period. Customs considers that the Australian industry does not produce a like good to the photographic grade imported from TSC (refer section 4.3) and therefore those imports are not part of this inquiry.

Customs visited TSC and verified the information in its submission. Customs confirmed that TSC manufactures the goods under consideration.

Customs' records indicated that seven Australian companies imported the goods from TSC. These included distributors and end-users. Customs contacted these companies. Each confirmed that it imported the goods and gave relevant details. Customs subsequently carried out a verification visit at the premises of five of these importers. These verification exercises, together with Customs' verification investigation at TSC, confirmed the importations.

Customs considers TSC to be the exporter as, in addition to manufacturing the goods, TSC:

- negotiates the sales with the Australian importers;
- packs and delivers the goods to the port;
- arranges the overseas shipping and preparation of the bill of lading;
- pays the shipping line;
- receives payment for the goods from the Australian importers.

Customs found that sales of the imported goods were generally profitable. None of the importers were found to be related to or otherwise associated with TSC, except in their respective roles as buyer and seller of the goods. Customs did not find evidence of any consideration (other than price) or reimbursement or provision of benefit in respect of the export price.

As a consequence of its inquiries, Customs is satisfied that:

- sales to the Australian importers were arms length transactions;
- the goods were exported to Australia other than by the importers; and
- the goods were purchased by the importers from the exporter.

Therefore, Customs determined export prices under s. 269TAB(1)(a) of the Act using the price paid by the importers less overseas freight and insurance, where applicable.

Export price calculations are at confidential appendix 6.

6.1.1.2 Normal value

In determining normal values for TSC, Customs considered verified information provided by TSC both in its exporter questionnaire and in Thailand.

As mentioned above, TSC is a manufacturer of the goods under consideration. On the Thailand domestic market, TSC sells a number of grades, including food and technical grades. The food grade sold on the domestic market is identical to the food grade exported to Australia and is therefore like goods. The technical grade sold on the domestic market is a standard technical grade. This grade is different to the specially formulated technical mining grade that TSC sells in Australia. However Customs considers that the two grades have characteristics that closely resemble each other. Therefore Customs considers the technical grade sold on the Thai domestic market to be like goods to the technical mining grade exported to Australia.

There are no agents involved in domestic sales. TSC sells directly to both end-users and traders. Customs examined all domestic sales of the like goods.

Customs verified the price paid by customers for domestic sales. No evidence was found of any relationship, other than that of buyer and seller, between TSC and its customers. Customs was satisfied that the sales were arms length transactions.

Customs calculated the domestic unit cost to make and sell for food grade and technical grade for each quarter of the investigation period. TSC's domestic selling prices were compared to the relevant quarter's cost to make and sell for the particular grade. The comparison showed that no domestic sales were at a loss. Customs considered all sales to be in the ordinary course of trade.

In determining the domestic unit cost to make and sell Customs accepted depreciation charges for plant and equipment as reflected in TSC's audited accounts. In responding to the SEF, Incitec submitted that the depreciation period used for this purpose exceeded industry practice (ten years) and did not reflect the Revenue Code of Thailand (that allowed plant and equipment to be depreciated over a five year period). Customs considered the Australian industry's submission but on the evidence provided by TSC was satisfied that the company's accounting treatment of depreciation was

reasonable. Customs notes that even if costs had been determined on the basis suggested by the Australian industry, there would have been no difference to the ordinary course of trade outcome.

Customs determined that the volume of relevant domestic sales was not less than five per cent of the volume of exported goods. Therefore Customs concluded that relevant domestic sales were not low volume for the purposes of s. 269TAC(2)(a)(i).

No market factor was identified to render domestic sales to be unsuitable within the meaning of s. 269TAC(2)(a)(ii) of the Act.

Customs concluded that the prices paid for domestic sales of like goods were suitable for determining normal values and therefore normal values could be determined under s. 269TAC(1) of the Act.

TSC identified a number of differing circumstances between export and domestic sales and claimed various price adjustments pursuant to s. 269TAC(8). Customs considers the following adjustments to be justified to ensure fair comparison with export prices.

Table 1: Adjustments to TSC's domestic prices

Negative adjustments	Positive adjustments
domestic credit	export credit
domestic freight	export inland freight
specification (technical grade only)	export handling

In responding to the SEF, the Australian industry submitted that as there are no sales of technical mining grade on the Thai domestic market it could not be evidenced that the cost differences (between technical mining and technical grades) result in different selling prices (of the two grades) in Thailand and, therefore, a specification adjustment under s. 269TAC(1) must be disallowed.

The rationale for a specification adjustment is that there are no like goods sold on the domestic market that are directly comparable to the exported good - if there were a specification adjustment would not be necessary. Therefore demonstrating the appropriateness of a specification adjustment by comparing sale prices in the domestic market as suggested by Incitec is generally not possible. Customs' approach is to consider all the circumstances regarding selling prices, in particular the economic reality that cost and quality are normally important factors in determining price. In this regard, Customs verified that there are cost differences between the various grades of SMBS and that these reflect the specification enhancements of the grades. Customs also verified that domestic selling prices between grades varied, once again reflecting specification enhancement. In other words, Customs found that the higher the quality of the grade, the higher the cost to make and sell that grade and the higher the sale price. Further, Customs obtained documents detailing negotiations between TSC and its Australian

customers evidencing cost and pricing relationships between TSC's technical mining and technical grades.

Given the available evidence, Customs is satisfied that there are differences in physical characteristics between TSC's technical mining grade and technical grade and that these differences influence price. Customs therefore considers that a specification adjustment is appropriate.

In addition to the adjustments described in the above table, TSC claimed adjustments for ad hoc supply and demand, quantity (photographic grade) and customer group discount. Customs was not satisfied that the price paid was affected by these particular claimed adjustments and therefore will not recommend that the adjustments be made.

Customs determined normal values under s. 269TAC(1) of the Act with adjustments, as per Table 1, to the price paid or payable under s. 269TAC(8).

Normal value calculations are at confidential appendix 7.

TSC's cost to make and sell is at confidential appendix 8.

6.1.2 Cowin Industry Co., Ltd

6.1.2.1 Export price

As mentioned previously, Cowin did not complete an exporter questionnaire.

Information relating to Cowin's activities was obtained from the importer of its goods, from Custom's visit to Thailand and from Cowin's internet website. On the basis of the available information Customs considers that Cowin manufactures the goods under consideration.

Customs identified that there was one importer of Cowin's SMBS during the investigation period. Customs visited this importer and obtained documentation relating to each import transaction. All imports were of food grade SMBS.

The available evidence indicates Cowin to be the exporter as, in addition to manufacturing the goods, Cowin was the party:

- with whom the importer negotiated its purchases;
- identified on the packing list as the packer of the goods;
- identified on the bill of lading as the consignor of the goods;
- who sent the bill of lading and the commercial invoice to the importer; and
- whom the importer paid for the goods.

From evidence obtained during its visit to the importer, Customs was satisfied that sales of the imported goods were profitable. The importer and Cowin were not found to be related or otherwise associated, except as buyer and seller respectively of the goods. Customs did not find evidence of any

consideration (other than price) or reimbursement or provision of benefit in respect of the export price.

While the available evidence indicates that:

- sales to the Australian importer were arms length transactions;
- the goods were exported to Australia other than by the importer; and
- the goods were purchased by the importer from the exporter,

Customs did not carry out a verification visit to the exporter. Therefore Customs could not be satisfied that sales between Cowin and the importer were, or were not, arms length. As such, Customs cannot ascertain export price under either s. 269TAB(1)(a) or (1)(b).

Customs recommends that export price be determined having regard to all the circumstances of the exportations pursuant to s. 269TAB(1)(c) of the Act.

Export price calculations are at confidential appendix 6.

6.1.2.2 Normal value

As Cowin did not cooperate in the investigation Customs had no information relating to domestic sales of SMBS by Cowin. Customs was unable to verify that there were domestic sales by Cowin or to conduct arms length and ordinary course of trade examinations.

However, as discussed in section 6.1.1.2, Customs had verified information relating to Thai domestic sales of SMBS by another seller, TSC. Customs concluded that the prices paid or payable in those sales were suitable for determining normal value pursuant to s. 269TAC(1).

Customs determined that the volume of relevant domestic sales by TSC was not less than 5 per cent of the volume of exported goods by Cowin. Therefore Customs concluded that relevant domestic sales were not low volume for purposes of s. 269TAC(2)(a)(i).

No market factor was identified to render domestic sales to be unsuitable within the meaning of s. 269TAC(2)(a)(ii) of the Act.

Therefore, Customs considers that the normal value for the goods exported to Australia by Cowin can be determined using the price paid for like goods sold by TSC.

Since Cowin did not provide any information relating to domestic or export sales Customs is unable to assess whether any price adjustments to reflect differences in circumstances between domestic and export sales is appropriate. Therefore Customs will not make recommendations regarding adjustments.

Customs determined normal values under s. 269TAC(1) of the Act with no adjustments.

Normal value calculations are at confidential appendix 7.

6.2 China

Each of the exporters identified by Customs was sent an exporter's questionnaire and invited to complete and return the questionnaire to Customs. No completed questionnaires were returned. Three companies advised Customs that they would not be cooperating with the investigation.

Customs was concerned to ensure that companies had actually received the questionnaire. In this regard the Embassy of the People's Republic of China was contacted and its assistance requested in contacting the companies to confirm their non-cooperation in the investigation. The Embassy subsequently advised Customs that no Chinese exporter would be completing the questionnaire.

6.2.1 Export price

Using its commercial database Customs identified all imports of the goods from China during the investigation period. There were five importers of Chinese exports of SMBS. Both food and technical grades were imported, although most imports were technical grade.

Customs conducted verification visits to the five importers. Customs gathered order and import information (including purchase order, freight and port documentation, commercial invoice from supplier and evidence of amount paid to supplier) relating to a wide selection of these imports. As well, Customs obtained information relating to the sale of the imported goods (including invoice to purchaser and evidence of receipt of payment) and importers' expenses.

Customs found that sales of the imported goods were generally profitable. All importers claimed not to be related or otherwise associated with any of the Chinese suppliers, except as buyer and seller respectively of the goods. Customs did not find evidence to the contrary. There was also no evidence of any consideration (other than price) or reimbursement or provision of benefit in respect of the export price.

The evidence available to Customs in Australia indicated that:

- sales to the Australian importer were arms length transactions;
- the goods were exported to Australia other than by the importer; and
- the goods were purchased by the importer from the exporter.

However, as Customs did not carry out any verification visits in China it could not be satisfied that sales were, or were not, arms length transactions. Therefore Customs cannot determine export price pursuant to s. 269TAB(1)(a) or (1)(b).

Customs considered using s. 269TAB(1)(c) of the Act to determine export price. However Customs did not obtain any information from Chinese exporters and therefore Customs could not be satisfied that it knew all the circumstances of the exportations.

Customs is satisfied that sufficient information has not been furnished to enable the export price of goods to be ascertained under s. 269TAB(1)(a), (1)(b) or (1)(c).

Therefore, Customs recommends that export prices be determined under s. 269TAB(3) of the Act having regard to all relevant information.

Export price calculations are at confidential appendix 6.

6.2.2 Normal value

The normal value of goods is determined under s. 269TAC of the Act.

In the past, China was considered to be a centrally planned economy where the government had a monopoly, or a substantial monopoly, of China's trade and determined, or substantially influenced, the domestic price of goods in that country.

The Australian government now considers China to be an economy in transition. Australia's anti-dumping legislation specifically provides for a situation where normal values are to be determined for a country whose economy is in transition. The relevant provisions are at s. 269TAC(5D) to s. 269TAC(5J) of the Act.

Section 269TAC(5D) of the Act is relevant where there is a price control situation in relation to like goods in the domestic market. Section 269TAC(5G) is relevant where particular raw materials used in producing the exported goods were supplied by an enterprise wholly owned by a national or provincial government and the cost incurred in procuring that raw material exceeds 10% of the total cost of producing the exported goods.

No exporter from China cooperated in the investigation. Therefore Customs had limited information available upon which to establish whether the appropriate circumstances existed that would allow determination of normal values under s. 269TAC(5D) or s. 269TAC(5G). Customs could not be satisfied in this respect.

If s. 269TAC(5D) or s. 269TAC(5G) cannot be used to determine normal value, Customs considers other provisions under s. 269TAC. In this case, the lack of any information from Chinese exporters regarding like goods, domestic prices, costs and export prices to third countries meant that Customs was unable to establish normal values under s. 269TAC(1), (2)(c) or (2)(d).

Therefore, Customs recommends that normal values be determined under s. 269TAC(6) having regard to all relevant information.

The relevant information used by Customs included verified data from the Australian industry, Thai exporter and Australian importers. Normal value calculations are at confidential appendix 7.

6.3 Dumping margins

A dumping margin is the amount by which the export price is less than the normal value. It is expressed as a percentage of the export price. Under s. 269TACB, the margin may be established on the basis of a comparison of:

- weighted averages of comparable normal values and export prices; or

- normal values and export prices on a transaction by transaction basis; or
- individual export prices and normal values over part or parts of the investigation period, and weighted average export prices and normal values over another part, or other parts of the investigation period; or
- a weighted average of normal values and individual export price transactions (if the export price differs significantly between purchasers, regions, or time periods).

6.3.1 Thailand

6.3.1.1 TSC

Customs used weighted averages of comparable transactions over the investigation period to assess dumping for TSC.

At the time of Customs' normal value verification visit to TSC the issue of like goods had not been resolved. Therefore Customs gathered information in respect of all goods exported to Australia—photographic, food and technical grades of SMBS. A dumping analysis was conducted for all these grades and the assessment reported in the normal value report on the visit. The assessment showed that there was a dumping margin for photographic grade, no dumping margin for food or technical grades and an overall product dumping margin of 3.5%. However, it was also noted that the margins calculated for purposes of the report were subject to change when the issue concerning like goods was resolved.

Subsequent to the normal value verification visit and report Customs concluded that the Australian industry did not produce like goods to the photographic grade of SMBS exported to Australia. Therefore photographic grade imported from TSC is not part of the investigation. Customs has carried out its dumping analysis on that basis and found that there is no dumping of food grade or technical mining grade.

Dumping calculations are at confidential appendix 9.

6.3.1.2 Cowin

Customs recommends that the dumping margin for Cowin be established on the basis of a comparison of the weighted averages of normal values and export prices over the investigation period.

On this basis, Customs calculated a dumping margin of 25.9% on SMBS exported to Australia by Cowin.

Dumping calculations are at confidential appendix 9.

6.3.2 China

As noted in section 6.2, Chinese exporters did not cooperate in the investigation. Therefore Customs has recommended that export prices and normal values be determined having regard to all relevant information (see sections 6.2.1 and 6.2.2 respectively).

Customs recommends that the dumping margin for Chinese exporters be established by comparing the weighted averages of normal values and export prices over the investigation period.

On this basis Customs calculated a dumping margin of 83% on SMBS exported to Australia by Chinese exporters. (Note that this margin differs slightly from the margin indicated in the SEF. New information enabled the calculation to be refined).

Dumping calculations are at confidential appendix 9.

6.3.3 Negligible dumping margins

Section 269TDA(1) of the Act requires the CEO to terminate an investigation, in relation to an exporter, where there has been:

- no dumping by the exporter; or
- where all of the exporter's dumping margins are negligible (*de minimus*), i.e. where margins worked out under s. 269TACB of the Act, when expressed as a percentage of the export price or weighted average of export prices, are less than 2 per cent.

The results of Customs' investigation, as set out above, show that the provisions of s. 269TDA(1) have been satisfied for TSC. Therefore subject to the Minister's determination in respect of dumping, Customs will terminate the investigation in relation to TSC.

However the provisions of s. 269TDA(1) are not satisfied for Cowin of Thailand or exporters from China.

6.3.4 Negligible volume of dumped goods

Section 269TDA(3) of the Act provides that:

if the volume of goods exported to Australia, over a reasonable examination period (whole or substantial part of the investigation period), from a particular country, that have been dumped is negligible, the CEO must terminate the investigation so far as it relates to that country.

This section defines a negligible volume of dumped goods as that which, when expressed as a percentage of the total Australian import volume is less than 3 per cent.

Customs found that:

- The volume of dumped imports from Thailand during the investigation period was less than 3 per cent of the total Australian import volume during that period.
- The volume of dumped goods from China was more than 3 per cent of the total Australian import volume during the investigation period.

Subject to the Minister's determination in respect of export prices, normal values and dumping, Customs will terminate the investigation as it relates to Thailand.

Calculations are at confidential appendix 4.

7. THE ECONOMIC CONDITION OF THE INDUSTRY

7.1 Introduction

This section reports on Customs' consideration of the economic performance of the industry producing SMBS and its assessment of claims that the industry has been injured.

7.2 Applicant's claims

Incitec claimed that material injury became evident from April 2000. The company alleged that dumped SMBS from China and Thailand caused, and is causing, material injury to the Australian industry through:

- price undercutting
- price depression
- price suppression
- loss of profits and profitability
- reduced return on investment
- under-utilisation of capacity

For the purposes of injury analysis, Customs examined the Australian market from 1 January 1998.

7.2.1 Price undercutting

Price undercutting occurs where the imported product sells below its Australian equivalent.

In its application, Incitec stated that its prices for SMBS had been undercut by imports from Thailand and China. Incitec provided correspondence concerning price negotiations with five large customers that it claimed demonstrated price undercutting from imports. Customs noted that in each of these instances the competing imports were identified as being from China.

In the SEF, Customs compared sales prices of importers with a combination of Incitec's monthly average sales prices to particular customers and its quarterly average prices for all SMBS to test price undercutting. Responding to the SEF, Incitec argued that that analysis could produce misleading outcomes as food grade typically sold at a higher price than technical grade and therefore averages based on all SMBS sales would distort the true picture for each grade. Incitec subsequently provided information that allowed Customs to test price undercutting by comparing monthly average sale prices received by Incitec for each grade during the injury period with respective monthly average and individual sale prices received by importers for the relevant grades.

In relation to Thailand, Customs did not find evidence of routine price undercutting by sellers of Thai product. With one exception, Customs found that the prices received by each importer selling Thai product were above the respective per tonne monthly average revenue received by Incitec. The

exception concerned sales of food grade by one importer to a long-term customer where the price was fixed throughout the injury period. Thus some sales by this importer to the customer during the injury period were below Incitec's per tonne monthly average price while others were higher.

In the case of Chinese SMBS imports, Customs found that per tonne monthly average sale prices of Chinese food grade imports did not undercut the per tonne monthly average prices received by Incitec. Most food grade was sold in relatively small volumes at (per tonne equivalent) prices above Incitec's per tonne average revenue for the relevant month. For technical grade SMBS, the market may be split into the mining sector (where purchases are large volume, usually at least 20 tonnes) and the non-mining sector (where purchases are generally much smaller). Customs found that there were sales of Chinese technical grade SMBS in both these markets that undercut Incitec's per tonne average revenue for the relevant month.

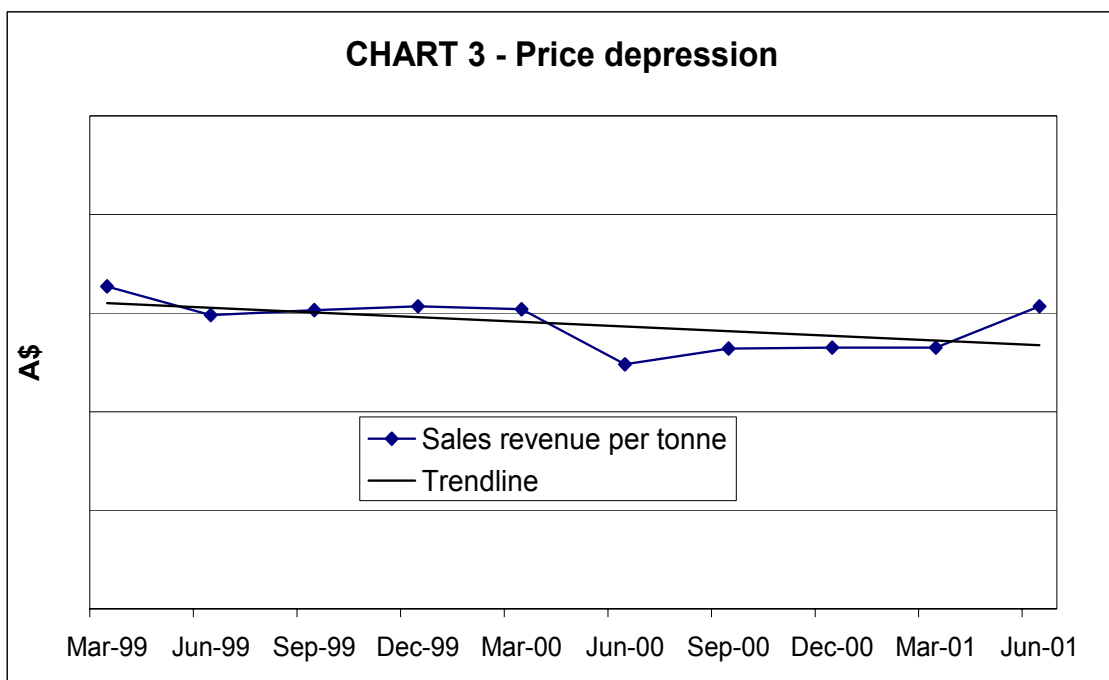
In conclusion, Customs did not find evidence that imports of SMBS from Thailand undercut the Australian industry's prices. Nor did Customs find that sales of Chinese food grade SMBS routinely undercut the Australian industry's prices. However, Customs did find that a significant number of sales of Chinese imports of technical grade SMBS undercut the Australian industry's prices.

Details relating to price undercutting are at confidential appendix 10.

7.2.2 Price depression

Price depression occurs when the Australian industry, for some reason, lowers its prices.

Incitec provided data, which Customs verified, on its domestic quarterly average selling prices to support its claim of price depression. The data is graphed in chart 3.



The chart shows that a significant fall in average prices occurred in the June 2000 quarter. Average prices were maintained at that depressed level for the following three quarters before rising in the second quarter of 2001. The trend line across the period is downward sloping.

Customs considers the Australian industry suffered price depression.

Details relating to price depression are at confidential appendix 10.

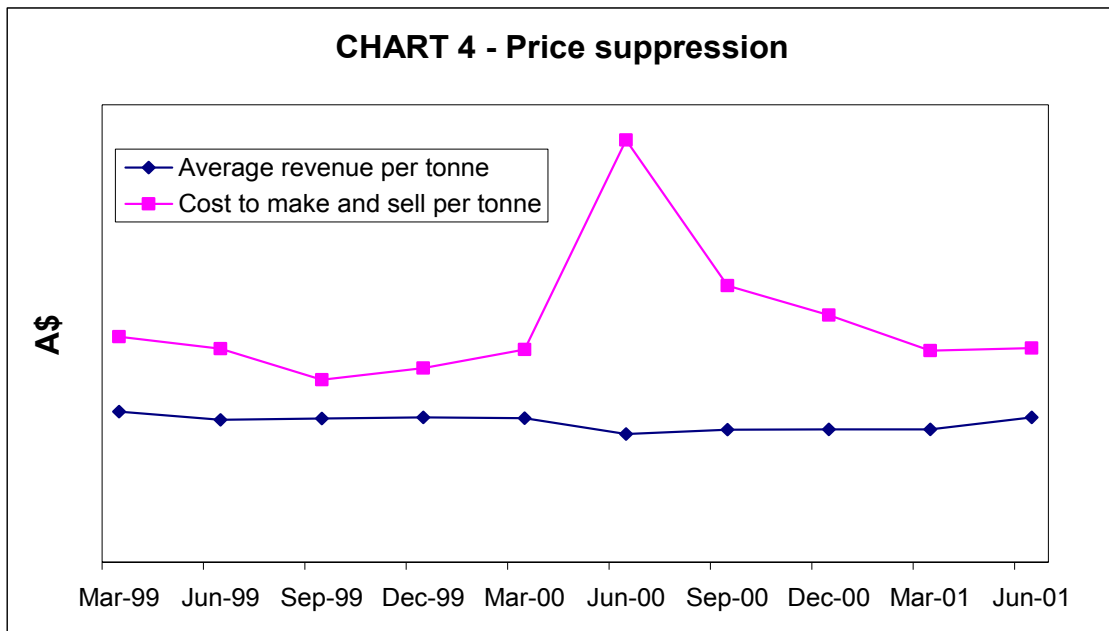
7.2.3 Price suppression

Price suppression occurs when the margin between a company's costs and prices is reduced. In this case, the margin has been negative throughout the analysis period. Therefore an increase in margin indicates price suppression.

Customs verified data provided by Incitec on its domestic cost to make and sell (CTMS) solid SMBS. Customs used this data to calculate the quarterly weighted average CTMS solid SMBS.

To assess price suppression, Customs compared the quarterly weighted average CTMS per tonne with the corresponding quarterly weighted average revenue per tonne. This data is shown in chart 4.

The data shows that the margin between per unit costs and revenue began to widen in the first quarter 2000. The June and September, 2000 quarters were affected by abnormal cost impacts because of operational problems at Incitec. In the December quarter production returned to normal, however the gap between per unit costs and revenue increased compared with the March 2000 position. The subsequent two quarters have seen an improvement in the gap, but it remained (in the June 2001 quarter) marginally wider than that for the March 2000 quarter.



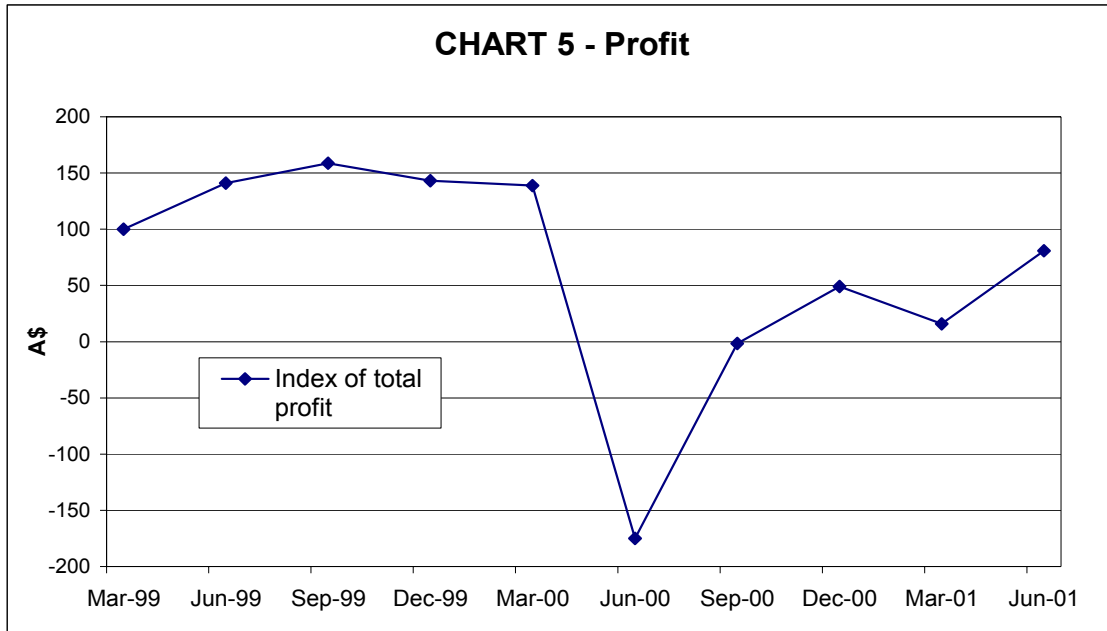
Customs considers the Australian industry suffered price suppression.

Details relating to price suppression are at confidential appendix 10.

7.2.4 Profits and profitability

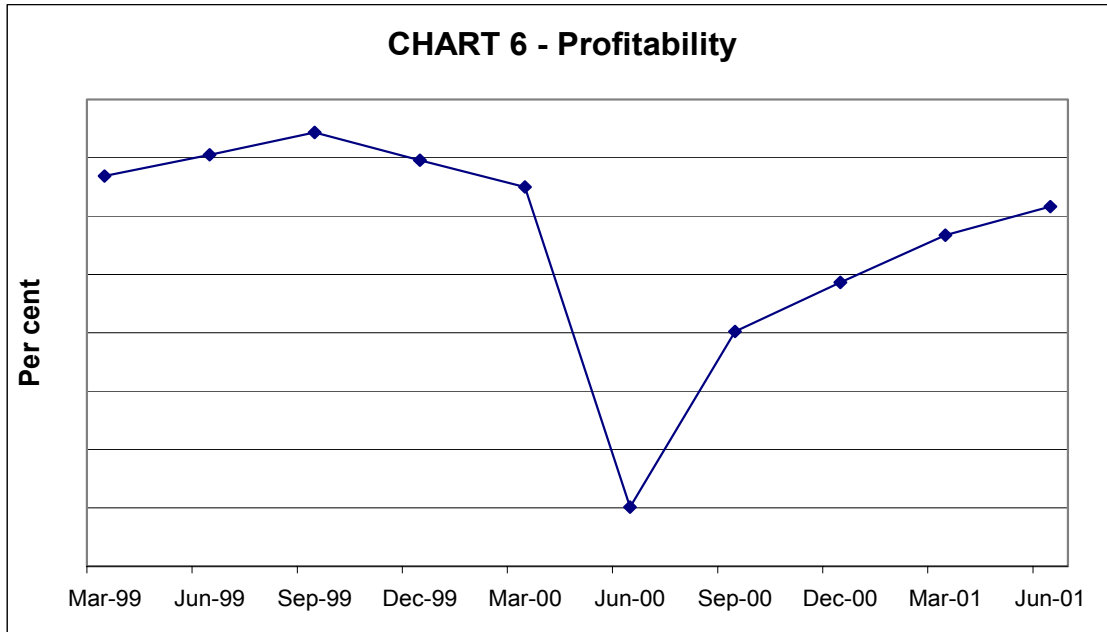
Incitec claimed injury from loss of profits and profitability.

Incitec's application included data on its profit and profitability for SMBS that was verified by Customs during its visit to Incitec. The data has been graphed at charts 5 (profit) and 6 (profitability).



Incitec has been making losses on its sales of SMBS. Chart 5 shows that losses for SMBS worsened substantially in the June quarter 2000. Customs was informed by Incitec that in this quarter the plant required major unplanned maintenance that led to a substantial loss of production and increased per unit costs. This continued into the September 2000 quarter, but by the beginning of the December quarter production had returned to normal. Despite this, losses per tonne in the December quarter were greater than the general level of losses in the pre injury period. There was some improvement in loss levels in the March 2001 quarter and again in the June 2001 quarter, but the levels continue to be greater than those existing in the pre injury analysis period.

As chart 6 shows, profitability followed a similar pattern as for profit.



Customs is satisfied the Australian industry suffered loss of profits and profitability.

Details relating to profit and profitability are at confidential appendix 11.

7.2.5 Return on investment

Incitec has incurred losses (see section 7.2.4) throughout the injury analysis period, and therefore its return on investment has been negative.

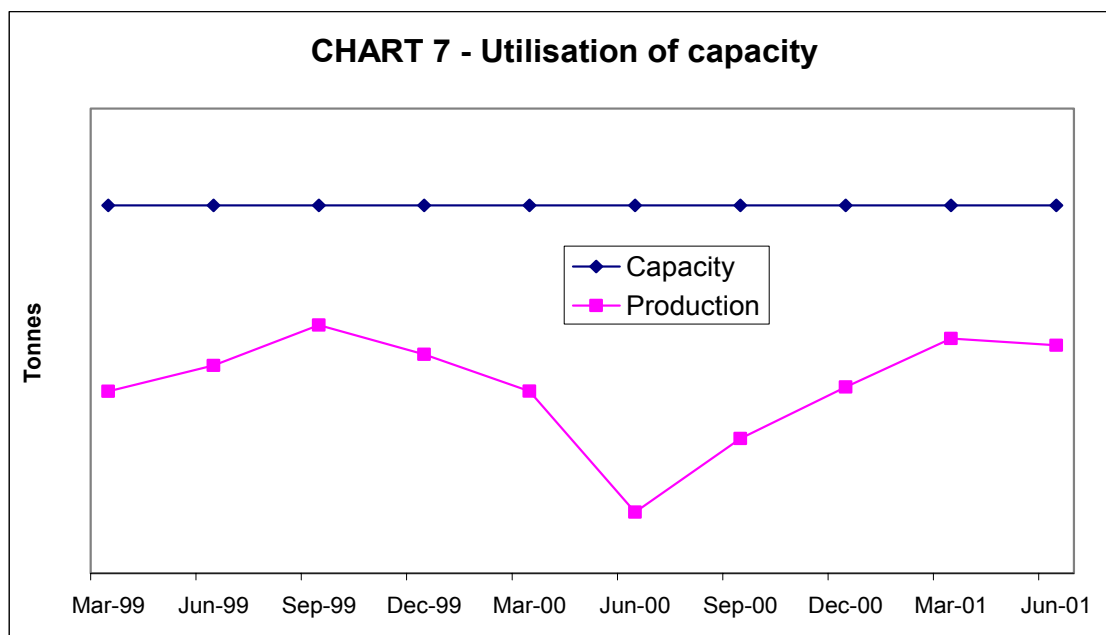
Customs compared Incitec's actual rate of return for SMBS with the rate of return anticipated when the plant was commissioned (1996), overall returns achieved by other companies in the chemical industry and also with the returns for individual chemical products. The return has been well below any of these comparative measures.

Customs is satisfied the Australian industry suffered inadequate return on investment.

7.2.6 Degree of utilization of capacity

Incitec claimed injury in the form of capacity under-utilisation.

Incitec provided details of capacity and quarterly production figures of SMBS during the injury analysis period. Customs verified this data, and it is displayed in chart 7.



The data shows that Incitec's quarterly production figures were below capacity in every period during the injury analysis period.

Customs is satisfied the Australian industry suffered under-utilisation of capacity.

Details relating to under-utilisation of capacity are at confidential appendix 12.

7.3 Other injury factors

Article 3.4 of the WTO Agreement and s. 269TAE of the Act identify potential injury factors. Only the factors discussed above were claimed by Incitec in its application. Customs also considered the following factors not claimed by Incitec:

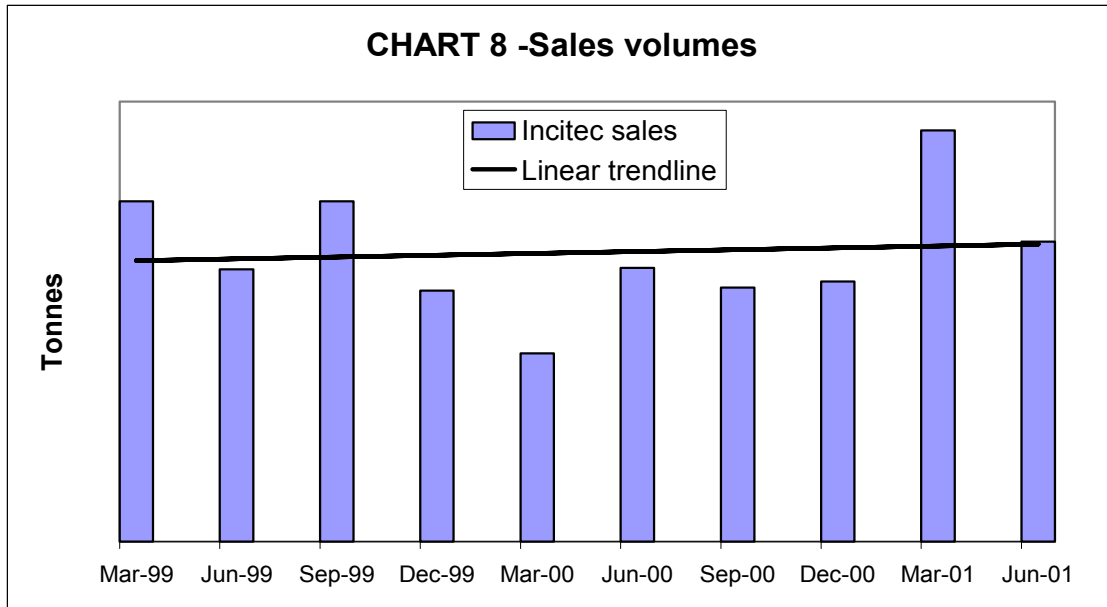
- sales volume
- market share
- sales for forward orders
- stocks and stock movements
- productivity
- cash flow
- wages and employment
- ability to raise capital and attract investment to the industry.

7.3.1 Sales volume

Incitec stated in its application that during the injury analysis period it lost sales to imports, however it was able to regain some of them and maintain

overall sales volume by matching the lower prices of imports. Incitec commented that sales volume varies from year to year because the largest volume users of SMBS are the mining industry where demand is volatile and related to the metallurgy of ore bodies being mined at any point in time.

Chart 8 plots verified SMBS (including SBS) sales volumes of Incitec over the injury analysis period.



The chart shows that Incitec's sales volumes fluctuated across the injury analysis period. In particular, sales declined significantly in the March quarter 2000 which was when the company experienced production problems. Notwithstanding these problems, sales were generally weaker in 2000 compared with the previous year. However, Incitec's sales volumes have recovered strongly during the first two quarters of 2001. The linear trend line for the period is slightly upward sloping.

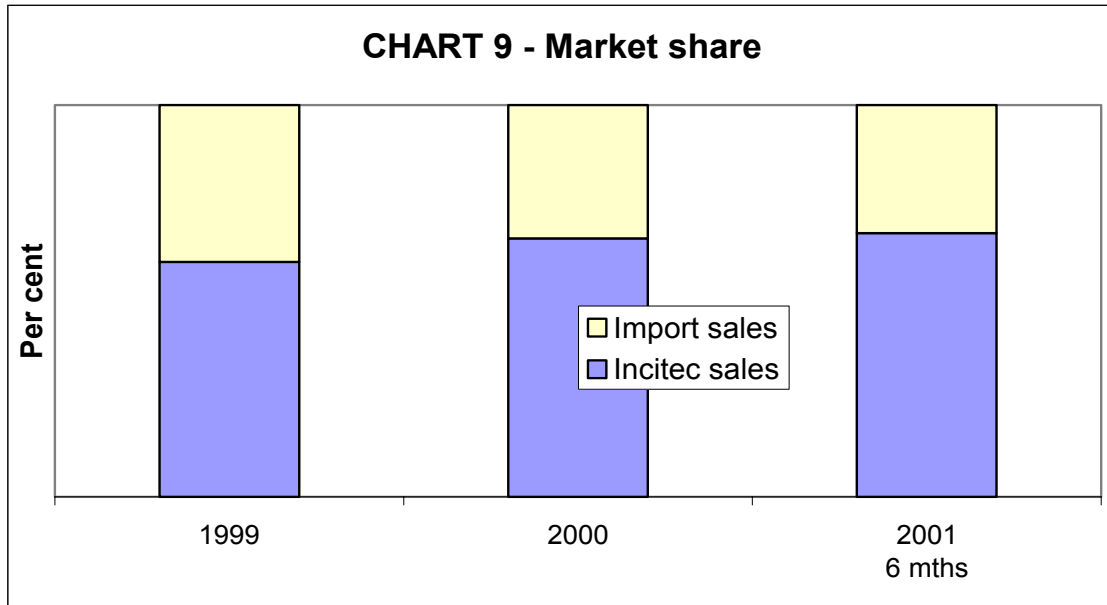
Customs is not satisfied the Australian industry lost sales volume.

Details relating to sales volumes are at confidential appendix 12.

7.3.2 Market share

Customs determined the Australian market by using a combination of actual sales volumes and import data from Customs' commercial database. Incitec's sales volumes are actual sales of both SMBS and SBS.

Chart 9 depicts the relative market shares of Incitec and imports of SMBS.



Customs is not satisfied that the Australian industry has suffered loss of market share.

Details relating to market share are at confidential appendix 12.

7.3.3 Forward orders

Incitec has not claimed material injury in the form of loss of forward orders as forward orders for the largest customer group, the mining sector, were irregular.

In its application Incitec noted that there was no change in forward orders.

Customs' inquiries with customers in the mining sector confirmed that forward orders of SMBS were unusual.

Customs is not satisfied that the Australian industry has suffered loss of forward orders.

7.3.4 Stocks and stock movements

Incitec stated that as it is able to alter production to suit demand there has been no material change to stock levels during the injury period.

Customs does not consider the Australian industry has suffered injury because of stocks.

7.3.5 Productivity

Incitec provided information on staff numbers, production volumes and dollars invested. This data shows that:

- productivity in terms of production per staff member declined slightly from 1998 levels during 1999 and 2000, but returned to 1998 levels in the first half of 2001; and

- productivity in terms of dollars invested per tonne has increased steadily in the period 1998 to June 2001.

Customs is not satisfied that the Australian industry has suffered reduced productivity.

7.3.6 Cash flow

Incitec's application states there has been no material change to cash flow during the injury analysis period.

Incitec advised that cash flow was only reported at a business level, not at an SMBS production level, and thus it could not provide any information to Customs on this possible indicator of material injury.

Customs' examination of cash flow was inconclusive.

7.3.7 Employment and wages

Incitec informed Customs that SMBS manufacturing is not labour intensive.

Customs' inspection of relevant records indicated that wages and employment have not significantly changed during the injury analysis period.

Customs is not satisfied that the Australian industry has suffered injury in relation to wages or employment levels.

7.3.8 Ability to raise capital

As discussed in section 7.2.5 above, returns on investment have been negative during the injury analysis period. Incitec considers that because of this it would be extremely difficult to raise capital for additional investment in SMBS production. However, Incitec does not consider such capital raising would be necessary in the foreseeable future as Incitec's plant is currently operating below capacity and the market is not showing any signs of imminent significant growth.

Information provided by Incitec indicates there has been no capital investment in the SMBS business since 1998.

Customs' examination of ability to raise capital and attract investment was inconclusive.

8. HAS DUMPING CAUSED MATERIAL INJURY?

Customs is satisfied that the Australian industry has suffered material injury from some cause or causes.

The next step in the process is for Customs to examine possible causes of material injury and to determine whether dumping, of itself, caused material injury.

8.1 Issues raised by interested parties

The following issues related to injury were raised by interested parties.

- The injury to Incitec was mainly self-inflicted because Incitec chased sale volumes at the expense of prices. Incitec was actually undercutting import prices.
- The siting of Incitec's manufacturing plant was a major cause of its problems because of high freight costs associated with procuring raw material and making sales—the plant is at Port Kembla in NSW so that the main raw material must be freighted from South Australia while the largest market (the mining industry) is mostly in Western Australia.
- The market for SMBS in Australia has declined, due in part to concerns about the use of chemicals in both the food and mining industries.
- At the time Incitec entered the market prices for SMBS were already decreasing because of increased production capacity overseas.
- Incitec suffered severe production problems in the first half of 2000 and some customers became disillusioned with Incitec's ability to supply within a short time of order.
- Some customers prefer to maintain a dual sourcing policy.
- Demand for SMBS is volatile, especially in the mining industry. One end-user who currently purchases significant volumes of SMBS anticipates that after about May 2002 no more will be required for two to three years.
- In food grade, German and Italian imports provide price leadership.
- Incitec ignores the smaller end of the market (Incitec has minimum sales volume of one tonne). Some importers/distributors claim they have never been approached by Incitec to sell its product.

8.2 Australian industry's claims

The Australian industry identified the ways in which injury is being experienced (see chapter 7). The injury claims are primarily price related, with flow on effects to profit and profitability.

Incitec claimed that from early in 2000 imports of SMBS from China and Thailand, being offered at dumped prices, caused price depression and price suppression. This injury materialised as reduced profits and profitability.

Incitec noted that the SMBS market is driven primarily by the mining industry and that demand in that industry is volatile. Incitec acknowledges that there has been a decline in the market size over the last 18 months.

Incitec also noted that it had difficulties in its production process that resulted in reduced output volumes in the second quarter of 2000.

The company acknowledges that market decline and lost production may have made some small contribution to its injury, however it claims that by far the major cause has been dumped imports from China and Thailand.

In responding to the SEF, Incitec countered some of the claims made by interested parties (see section 8.1).

- To the claim that injury is self-inflicted because Incitec chased sales volume at the expense of prices, Incitec states that it has mostly matched import prices. If it had not done this, it would have lost sales.
- To the claim that Incitec's plant is not located near its raw material supply, Incitec states its plant (at Port Kembla) is near a sea port. This allows it to obtain competitive raw material prices, since it is relatively easy for Incitec to import.
- To the claim that the Australian market has declined, Incitec states that although (total) demand is volatile Incitec has not witnessed a decline in food grade demand, nor noticed a dramatic decline in demand in the mining industry due to concerns about chemical use.

8.3 Customs' assessment

In chapter 6 Customs concluded that:

- Imports of food and technical (mining) grades of SMBS from TSC of Thailand were not dumped.
- Imports of SMBS from Cowin of Thailand were dumped and the margin was not negligible in terms of s. 269TDA(1).
- The volume of dumped imports from Thailand was negligible in terms of s. 269TDA(3).
- Imports of SMBS from China were dumped.
- The volume of dumped imports from China was not negligible in terms of s. 269TDA.

Customs considered the claims of all interested parties, as detailed in sections 8.1 and 8.2.

Since exports of the goods by TSC were determined by Customs to be not dumped, dumping by TSC cannot be a cause of material injury to the Australian industry. Further, since the volume of dumped imports from Thailand is negligible in terms of s. 269TDA(3), imports of the goods from Thailand would not have caused material injury to the Australian industry.

Customs found that imports of SMBS from China undercut Incitec's prices, particularly in the mining segment of the market. This is the largest market segment and Incitec's manufacturing efficiency was dependent on maintaining its share of this market. Incitec was able to achieve this, but to do so it had to lower prices to the levels of the dumped Chinese imports. Customs notes the high dumping margin (83%) against which Incitec had to compete. This caused price depression and price suppression, with negative flow on effects to profit and profitability.

Customs is satisfied that:

- Dumping by TSC could not have caused material injury to the Australian industry producing like goods.
- Dumped imports from Thailand were not a cause of material injury to the Australian industry producing like goods.
- Dumped imports from China have caused material injury to the Australian industry producing like goods.

9. WILL DUMPING AND INJURY CONTINUE?

Where the Minister is satisfied that dumping has caused material injury to the Australian industry producing like goods anti-dumping measures may be imposed on future exports if the Minister is also satisfied that the future exports may be dumped. By signing a notice under s. 269TG(2) of the Act to this effect, the measures are made prospective.

Customs is not satisfied that future exports of SMBS from Thailand are likely to be dumped to the extent of causing material injury to the Australian industry in the near future, as there is no evidence that the situation in respect of such exports is likely to change substantially.

Customs is satisfied that future exports of SMBS from China are likely to be dumped to the extent of causing material injury to the Australian industry in the near future, as there is no evidence that the situation in respect of such exports from China is likely to change substantially.

10. ANTI-DUMPING MEASURES

10.1 Background

Dumping duties are applied where it has been established that dumped imports have caused or threaten to cause material injury to an Australian industry producing like goods. The level of dumping duty cannot exceed the margin of dumping, but a lesser amount may be applied if it is determined that a lesser rate of duty is sufficient to remove the injury. This lesser duty provision is contained in the World Trade Organization (WTO) Anti-Dumping Agreement. Australian legislation reflects the principle of this provision in s. 8(5A) of the *Customs Tariff (Anti-Dumping) Act 1975*.

10.2 Price undertaking

The Minister may defer the decision to publish a dumping duty notice and accept an undertaking from an exporter that the exporter would so conduct future trade to Australia in like goods so as to avoid causing or threatening material injury to an Australian industry producing like goods (s. 269TG(4) of the Act refers). An undertaking on price is limited to the non-injurious price (NIP) of the goods (s. 269TG(5) of the Act refers).

An undertaking usually comes into effect on the date of publication of its acceptance by the Minister and applies for five years, unless revoked earlier, and is subject to the same review provisions as apply to interim dumping duty.

In this investigation, no price undertaking was offered.

10.3 Interim dumping duty

An interim duty is collected on each importation of goods subject to anti-dumping measures.

In determining the amount of interim dumping duty payable, the Minister must ascertain an export price, a normal value and a NIP for the goods. The interim duty is based on the difference between the ascertained export price and the lower of the ascertained normal value and the ascertained non-injurious price.

Interim dumping duties are imposed for five years, unless revoked earlier.

In this investigation, Customs determined that:

- Dumped imports of SMBS from China have caused, and will continue to cause, material injury to the Australian industry producing like goods. Customs recommends anti-dumping measures be applied to imports of SMBS from China.
- Dumped imports of SMBS from Thailand are of negligible volume (see section 6.3.4). Customs recommends that no anti-dumping measures be applied to imports of SMBS from Thailand.

10.3.1 Ascertained export price

Customs recommends that export prices for SMBS exported from China be determined under s. 269TAB(3) of the Act (see section 6.2.1).

Customs recommends that the Minister ascertain the export price for SMBS exported from China by using the weighted average of export prices for SMBS exported from China and imported into Australia over the investigation period.

The ascertained export price as recommended by Customs is at confidential appendix 6.

10.3.2 Ascertained normal value

Customs recommends that the Minister determine the normal values for SMBS exported from China under s. 269TAC(6) of the Act (see section 6.2.2).

Customs recommends that the Minister ascertain the normal value for SMBS exported from China by using the weighted average of the normal values determined pursuant to s. 269TAC(6).

The ascertained normal value as recommended by Customs is at confidential appendix 7.

10.3.3 Non-injurious price

Australia is a signatory to the World Trade Organization (WTO) Anti-Dumping Agreement, which states:

it is desirable ... that the [anti-dumping] duty be less than the margin [of dumping], if such lesser duty would be adequate to remove the injury to the domestic industry.

Australian legislation reflects the principle of this provision in s. 8(5A) of the *Customs Tariff (Anti-Dumping) Act 1975*, which refers to the desirability of ensuring that the amount of dumping duty is not greater than is necessary to prevent injury to the local industry.

Section 269TACA defines the NIP as the minimum price necessary “to prevent the injury, or recurrence of the injury, or to remove the hindrance, referred to in s. 269TG(1)(b) or 2(b)”.

Anti-dumping and countervailing duties are usually based on FOB prices in the country of export. Therefore a NIP is normally calculated in FOB terms for the country of export.

The usual method for calculating a NIP is to first determine an ‘unsuppressed selling price’ (USP) for the goods in Australia—i.e. what the price would be in the absence of dumping. From that, Customs works back to an FOB price by deducting all relevant costs post export (for example ocean freight, marine insurance, duty, port charges, cartage to store, importers selling costs) and, where appropriate, an amount for the importer's profit.

10.3.3.1 Unsuppressed selling price

An USP is the price at which the Australian industry would be able to sell the goods in a market unaffected by dumped imports.

There are a number of options available to calculate the USP, including:

- Determine a price for locally produced goods when the Australian market was not affected by dumping.
- Use the lowest price for imports when the Australian market was not affected by dumping.
- Use the Australian industry's cost to make and sell, plus an estimated profit (if any) that the industry could achieve in a market not affected by dumping.

In this case, it is difficult to determine when the market was unaffected by dumping. The Australian industry nominated the second quarter of 2000 as the beginning of the injury period on the basis that this was when the injury noticeably worsened. However in its application the industry claimed that imports were being sold in the Australian market at dumped prices prior to then. Injury data provided by the industry demonstrates that it was suffering injury prior to 2000.

During the investigation Customs verified the Australian industry's cost to make and sell. Given the uncertainty of establishing when the market may have been unaffected by dumping Customs will use the industry's cost to make and sell plus profit (if any) to determine the USP.

Details of the calculation of the USP and NIP are at confidential appendix 13.

10.3.4 Conclusion

Customs calculated that the NIP is higher than the ascertained normal value for China.

Therefore the interim duty payable on imports of SMBS from China will be an amount equal to the sum of:

- the difference between the ascertained export price and the ascertained normal value; and
- the amount (if any) by which the export price is below the ascertained export price.

Customs recommends to the Minister that the interim dumping duty be ascertained by reference to a measure of quantity, that is tonnes.

Details of the interim dumping duty are at confidential appendix 14.

10.4 Scope of the measures

Section 269TP of the Act allows the Minister to apply anti-dumping measures to the goods exported from a particular country, rather than the goods exported by a particular exporter.

Customs recommends that the Minister take action against future exports of SMBS from China on a countrywide basis. This would ensure that all potential exports of SMBS at dumped prices would be covered for the period of the operation of the measures.

10.5 Review of measures

An affected party may seek a review of the anti-dumping measures.

Reviews may be requested where it is considered that one or more of the variable factors—the normal value, export price or NIP—has changed, or where grounds for revocation exist.

Requests for a review may be made either after twelve months from the original imposition of measures or at least twelve months after the Minister has reviewed one or more of the variable factors.

11. RECOMMENDATIONS

Customs is satisfied that:

- the Australian industry producing SMBS is suffering material injury from some cause or causes;
- since exports of the goods by TSC were determined by Customs to be not dumped, dumping by TSC could not have caused material injury to the Australian industry;
- since the volume of dumped imports from Thailand was calculated to be negligible in terms of s. 269TDA(3), dumped imports from Thailand were not a cause of material injury to the Australian industry;
- future exports of SMBS from Thailand are not likely to be dumped to the extent of causing material injury to the Australian industry in the near future;
- dumped imports from China have caused material injury to the Australian industry; and
- future exports of SMBS from China are likely to be dumped to the extent of causing material injury to the Australian industry in the near future.

Customs therefore recommends that the Minister take anti-dumping action against exports of SMBS from China.

Subject to the Minister's determination in respect of export prices, normal values and dumping, Customs will terminate the investigation as it relates to Thailand.

Customs recommends that the Minister **be satisfied** that:

- in accordance with s. 269TAB(3) of the Act, sufficient information has not been furnished or is not available to enable the export price of SMBS exported from China to be ascertained under the preceding sections of s. 269TAB;
- in accordance with s. 269TAC(6) of the Act, sufficient information has not been furnished or is not available to enable the normal value of SMBS exported from China to be ascertained under the preceding subsections of s. 269TAC;
- in accordance with s. 269TACB(4) of the Act, the weighted average of export prices over the investigation period (1 April 2000 to 31 August 2001) is less than the weighted average of corresponding normal values over that period for exports of SMBS to Australia from Thailand by Cowin;
- in accordance with s. 269TACB(4) of the Act, the weighted average of export prices over the investigation period (1 April 2000 to 31 August 2001) is less than the weighted average of corresponding normal values over that period for exports of SMBS to Australia from China;

- in accordance with s. 269TG(1) of the Act, the amount of the export price of SMBS exported to Australia from China is less than the amount of the normal value of those goods and because of that, material injury to an Australian industry producing like goods has been caused; or in the case where a security has been taken under section 42 – material injury to the Australian industry producing like goods might have been caused had the security not been taken; and
- in accordance with s. 269TG(2) of the Act, the amount of the export price of SMBS that has already been exported to Australia from China is less than the amount of the normal value of those goods, and the amount of the export price of SMBS that may be exported to Australia from China in the future may be less than the normal value of the goods and because of that, material injury to an Australian industry producing like goods has been caused.

Customs recommends that the Minister **determine**:

- in accordance with s. 269TAA(3)(b), the amounts for costs necessarily incurred in the importation and sale of SMBS exported to Australia from Thailand by TSC;
- in accordance with s. 269TAB(1)(c), the export price of the goods exported by Cowin to Australia by having regard to all the circumstances of exportation;
- in accordance with s. 269TAB(3), the export price of the goods exported from China to Australia by having regard to all relevant information;
- in accordance with s. 269TAC(6), the normal value of like goods to the goods exported to Australia from China by having regard to all relevant information;
- in accordance with s. 269TACB(1), by comparison of the weighted average of export prices in respect of SMBS exported to Australia from Thailand by TSC during the investigation period (1 April 2000 to 31 August 2001) with the weighted average of corresponding normal values in respect of like goods, that dumping has not occurred;
- in accordance with s. 269TACB(1), by comparison of the weighted average of export prices in respect of SMBS exported to Australia from Thailand by Cowin during the investigation period (1 April 2000 to 31 August 2001) with the weighted average of corresponding normal values in respect of like goods, that dumping has occurred; and
- in accordance with s. 269TACB(1), by comparison of the weighted average of export prices in respect of SMBS exported to Australia from China during the investigation period (1 April 2000 to 31 August 2001) with the weighted average of corresponding normal values in respect of like goods, that dumping has occurred.

Customs recommends that the Minister **direct**:

- in accordance with s. 8(5) of the *Customs Tariff (Anti-Dumping) Act 1975*, that the amount of interim dumping duty referred to in s. 8(4)(a)

of the same Act in respect of SMBS exported to Australia from China be ascertained by reference to a measure of the quantity (in tonnes) of the goods; and

- in accordance with s. 269TAC(8), in assessing normal value for TSC that the price paid for like goods be adjusted for differences between export and domestic sales in credit terms, domestic inland freight, export handling charges and specification differences (technical grade).

Customs recommends that the Minister **declare**:

- in accordance with s. 269TG(1), by public notice, that s. 8 of the *Customs Tariff (Anti-Dumping) Act 1975* applies to SMBS exported from China for which a security has been taken under s. 42 and like goods that were exported to Australia from China after Customs made a preliminary affirmative determination, but before publication of the notice; and
- in accordance with s. 269TG(2), by public notice, that s. 8 of the *Customs Tariff (Anti-Dumping) Act 1975* applies to SMBS exported from China to Australia after the date of publication of the notice.

To give effect to these recommendations, Customs recommends that the Minister sign the attachments.

12. LIST OF APPENDICES

- 1.* Glossary
- 2.* Statement of facts and evidence relied upon by Customs
- 3.* ACDN No 2002/5 dated 4 February 2002
4. Imports
5. Market information
6. Ascertained export price
7. Ascertained normal value
8. Cost to make and sell (TSC)
9. Dumping calculation
10. Injury analysis - price effects
11. Injury analysis - profit and profitability
12. Injury analysis - other factors
13. Non-injurious price
14. Interim dumping duty calculation

Appendices marked with an * are non confidential. All other appendices are confidential.

GLOSSARYArms length

S. 269TAA sets out the circumstances where a transaction is to be treated as non arms-length.

A transaction cannot be considered to be arms-length if:

- there is a consideration other than price; or
- the price is influenced by a relationship between the importer and exporter; or
- the buyer will be reimbursed, compensated or receive a benefit in respect of the price (unless it is an established, normal business practice to do so).

Export sales may not be at arms length if the importer is selling at a loss.

Ascertained export price, normal value and non-injurious price

Where a decision is taken to impose interim (or final) dumping duties, it is necessary to ascertain what is or would be the normal value, the export price and the non-injurious export price of those goods. The details of these ascertained prices must be published in a formal notice unless the release of such details contains information regarded by an interested party as confidential. The ascertained export price should not be confused with the actual export price.

See also normal value, export price, non-injurious price and interim duty.

Australian industry

S. 269T(4) states there is an Australian industry in respect of 'goods of a particular kind' if there is a person or persons who produces like goods in Australia. Where the like goods are close processed agricultural goods, the Australian industry will include producers of raw agricultural products.

Goods are not regarded as produced in Australia (other than unmanufactured raw products) unless the goods are wholly or partly manufactured in Australia. To be considered wholly or partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

Applications must be supported by a sufficient part of the Australian industry. S. 269TB(6) defines a sufficient part of the Australian industry as domestic producers whose collective output is more than 50% of the total production of those that have commented on the application. Supporters of the application must also account for 25% or more of the total production.

See also close processed agricultural goods and like goods.

Dumping

Dumping occurs when goods are exported to Australia at a price that is below the “normal value” of the goods. Normal value is usually the domestic price of the goods in the country of export.

Australia's anti-dumping and countervailing legislation is found in Part XVB of the Customs Act 1901. The Customs Tariff (Anti-Dumping) Act 1975 provides the mechanism to impose dumping and countervailing duties. The legislation reflects Australia's rights and obligations as a signatory to the World Trade Organization Anti-Dumping Agreement and Agreement on Subsidies and Countervailing Measures and with the Government's industry and economic policies.

Australia's legislation does not seek to establish whether dumping was or is predatory, and in some sense unfair. Rather, the objective is simply to identify the price differentiation if it exists, any material injury caused thereby, and to provide a mechanism to remove the injurious effect of subsequent imports.

Dumping duty

See “Interim dumping/countervailing duty” below.

Dumping margin

The dumping margin is the difference between the export price and the normal value. Dumping margins are usually calculated for each individual exporter and can be expressed as a value or as a percentage of the export price.

Dumping margins can be determined using different methods depending on the circumstances of the investigation. Under s 269TACB export prices are compared with normal values to arrive at dumping margins as follows:

- the weighted average export price over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period; or
- using the above method in respect of parts of the investigation period as if each of these parts were the whole of the investigation period; or
- the export price in respect of individual transactions over the whole of the investigation period with the corresponding normal values determined over the whole of that period; or
- a combination of methods referred to above in respect of part or parts of the investigation.

If the number of exporters who have provided a submission is so large that it is impractical to calculate individual dumping margins for each of the exporters, statistical sampling may be used to calculate dumping margins for those exporters with the largest volume of exports to Australia. The dumping margins established under this approach might then be used for the remaining exporters and applied as residual margins for that country.

Duty assessment

In order to ensure that the final anti-dumping duty collected by Customs does not exceed the actual dumping margin for shipments, provision exists for importers to apply for an assessment of the final duty liability. Reimbursement is not automatic - interim duty imposed at the time of entry for home consumption will become total duty payable unless an importer applies for an assessment.

Export price

Export prices are determined under s. 269TAB.

Usually the export price is determined under s. 269TAB(1)(a) using the actual price paid by the Australian importer, less post exportation charges, where:

- the importer is not the exporter;
- the transaction is arms length; and
- the goods have been purchased by the importer from the exporter.

When the sales are considered not to be arms-length, s. 269TAB(1)(b) and the related s. 269TAB(2) provide a method to determine the export price on the basis of the selling price by the importer, less prescribed deductions, provided:

- the subsequent sale in Australia by the importer was to a non-associated person; and
- the goods have been sold in the condition in which they were imported.

Prescribed deductions include any duties or value added taxes paid or payable on the goods and all other costs or charges incurred after exportation and profit.

When the conditions of s. 269TAB(1)(a) and (1)(b) cannot be met, s. 269TAB(1)(c) permits the export price to be determined having regard to all the circumstances of the exportation.

When sufficient information has not been furnished, or is not available, to enable the export price to be determined under the preceding provisions, the export price is determined having regard to all relevant information under s. 269TAB(3).

See also arms length.

Exporters

Please refer to s. 269T.

The term “new exporter” relates to an exporter who did not export the goods under consideration to Australia between the date given in the initiation notice as the commencement of the investigation period and the day before the statement of essential facts was placed on the public record.

The term “residual exporter” relates to an exporter of the goods under consideration, other than a selected exporter. Residual also includes new exporters.

The term “selected exporter” relates an exporter of the goods under consideration whose exportations were investigated in the original investigation. Generally speaking, all known exporters are selected, but there are certain circumstances (e.g. where their volume of exports was insignificant or where the number of exporters is so large that it is necessary to sample) where some exporters are not selected.

Initiation report

A report recommending or rejecting an application for the publication of a dumping and/or countervailing duty notice. The report sets out the reasons as to whether or not, on the prima facie evidence available, the application meets the provisions of the legislation (s. 269TC).

Instrument

A legal document signed by the Minister or his/her delegate, giving effect to the provisions of the anti-dumping legislation in imposing measures.

Interim dumping duty

Under the interim duty scheme an amount of dumping duty is collected on every importation of the goods. Duties remain in place for 5 years (unless revoked earlier).

Interim dumping duty is the sum of:

- the difference between the ascertained normal value (or the non-injurious price is that is lower) and the ascertained export price of the goods; and
- the amount by which the actual export price is less than the ascertained export price.

Interim dumping duty may be levied on an ad valorem basis (a percentage of the export price), or as an amount per unit of quantity; or as a combination of the two.

Interim duty becomes the final duty unless an importer requests a duty assessment. The final duty is the amount determined by the minister.

Investigation

Customs role in the dumping and subsidisation investigation is to:

- consider applications for the publication of dumping duty and/or countervailing duty notices;
- make recommendations to the Minister on whether sufficient grounds exist or that there are not sufficient grounds for the publication of dumping duty and/or countervailing duty notices; and
- where appropriate, require and take securities in respect of any dumping duty/ countervailing duty that may become payable.

The legislation imposes time limits within which an investigation is conducted:

- 20 days to examine an application and if not satisfied about certain matters reject the application;
- if an application is not rejected, at day 60 or later (calculated from the day of initiation of the investigation) to reach a preliminary affirmative determination (if appropriate); at day 110 to issue a statement of essential facts (unless this date has been extended by the Minister); and day 155 to make a recommendation to the Minister.

Interested parties are invited to make submissions within the first 40 days after the notification of the initiation of an investigation. An extension to a deadline for receipt of submissions by interested parties may be extended if a request is received in writing and the request is reasonable and practicable given the circumstances of the investigation. Interested parties are also given an opportunity to respond to the SEF.

Investigation period

A period specified in the initiation notice over which exportations of the goods under consideration are examined. The investigation period is relevant to the application of provisions dealing with such matters as the determination (for normal value purposes) of whether sales are in the ordinary course of trade, and in calculations to establish whether dumping or subsidy is negligible.

Like goods

S. 269T(1) defines 'like goods' as:

goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

Material Injury

The Minister may impose measures to relieve the affect of dumping up to the level of the dumping margin, when it has been proven that dumping has caused or is threatening to cause material injury to the Australian industry. Section 269TAE lists factors that may be regarded in determining whether the Australian industry has suffered material injury caused by dumping and subsidisation.

The factors include:

- the size of the dumping margin/s in respect of the goods exported to Australia and/or particulars of any countervailable subsidy received in respect of goods exported to Australia;
- the quantity of goods under consideration exported to, and consumed in Australia during a particular period and the consequential effect on the quantity of like goods produced or manufactured in Australia by the Australian industry and sold or consumed in Australia;
- the export price of the goods under consideration and the price paid for the goods sold in Australia and the consequential effect on the price paid for like goods produced or manufactured by the Australian industry and sold in Australia; and

- the effect that the exportation of goods under consideration to Australia in those circumstances has on the relevant economic factors in relation to the Australian industry.

In addition, those factors given in Article 3.4 of the WTO Dumping Agreement must be taken into account.

Non-injurious price

Dumping duties may be applied where it is established that dumped imports have caused or threaten to cause injury to the Australian industry producing like goods. The level of dumping duty cannot exceed the margin of dumping, but lesser duty may be applied if it is determined that it is sufficient to remove the injury. A non-injurious FOB price (NIFOB) or NIP is calculated for this purpose. The NIFOB and the NIP provide the mechanism whereby this lesser duty provision is given effect; they are the FOB price that would be sufficient to remove the injury caused to the Australian industry by the dumping.

The terms NIFOB and NIP have essentially the same meaning. The term NIFOB is not specifically defined in legislation and applies only to anti-dumping measures imposed before 1 January 1993. The NIP is defined but the method of calculation is not covered in the legislation.

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

Normal value

Normal value is the key to establishing whether dumping exists and s.269TAC sets out the methods used to ascertain the normal value of goods exported to Australia.

Usually, the normal value is ascertained under s. 269TAC(1) as the price paid for like goods in the domestic market of the exporting country provided:

- the goods are exported to Australia;
- the sale is in the ordinary course of trade;
- the sale is for home consumption in the country of export;
- the exporter's domestic sales are arms length ;
- the volume of sales in the domestic market of the exporting country is such as to permit a proper comparison with sales to Australia - generally an acceptable volume is taken to be 5% or more of the volume of the goods exported to Australia; and
- the situation in the exporters domestic market is such that the sales are suitable for determining a normal value.

If the exporter's domestic sales do not satisfy all of the above criteria, the same tests are applied to sales by other sellers of like goods on the domestic market of the exporting country.

Normal value cannot be determined under s. 269TAC(1) where:

- domestic sales that would be relevant for determining a price are absent or of low volume;
- the market situation in the country of export is such that it renders domestic sales as unsuitable for use in determining normal value; or
- it is not practical to obtain information in relation to sales by other sellers of like goods on the domestic market within a reasonable period.

Section 269TAC provides alternative methods for determining normal values where the criteria of s. 269TAC(1) are not satisfied.

Under s 269TAC(2)(c) and unless s. 269TAC(2)(d) applies, the normal value of the goods is the sum of:

- the cost of production or manufacture of the goods in the country of export; and
- on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export, the administrative, selling and general expenses associated with the sale; and
- an amount of profit.

In circumstances where a normal value cannot be determined from domestic selling prices because sales are found to be not in the ordinary course of trade, a profit component is not included.

Under s. 269TAC(2)(d) where normal value cannot be determined under the provisions of s. 269TAC(1), and the Minister so directs, the normal value of the goods is the price paid for like goods sold in the ordinary course of trade in arms length transactions for exportation to an appropriate third country.

Customs seeks evidence relating to both sections in order to decide which is the most suitable method for ascertaining normal value.

Where it is satisfied that sufficient information has not been supplied or is not available to determine normal values under any of the preceding provisions, the normal value may be ascertained under s. 269TAC(6) having regard to all relevant information.

Section 269TAC(4) provides a number of methods for ascertaining normal values where the government of the country of export has a monopoly, or substantial monopoly of the trade of the country, and determines or substantially influences the domestic price of goods in that country.

Sections 269TAC(5D) to (5J) provide a number of methods for ascertaining normal value where the economy of the country of export is in transition from centrally planned to market. Such an economy could be China or Russia.

A economy in transition is where the government of the country previously controlled or influenced the trade of that country, but that situation is changing.

The normal value under (5D) is such an amount determined by the Minister provided that a price control situation applies to the goods exported to Australia. "Price control" is defined in (5E) and further clarified in ministerial guidelines issued in January 2001.

Normal value under (5G) is the sum of:

- a sum determined by the Minister to be the value of a raw material input; and
- the amount of the cost incurred in producing the exported goods, other than the costs of the raw material; and
- an amount determined to the administrative, selling and administrative costs.

The raw material must have been supplied, whole or in part, by a state or national government; and the raw material costs exceed 10% of the costs incurred.

Sections 269TAC(8) and 269TAC(9) provide for adjustments to be made to the normal value to account for differences where the domestic and export sales prices:

- relate to sales occurring at different times;
- are not in respect of identical goods; or
- are modified in different ways by taxes or terms or circumstances of the sales.

Section 269TAC(10) enables the normal value to be determined in the country of origin instead of the country of export when the Minister considers it appropriate.

Notice

A notice is a public notice of the minister's decision on whether to impose dumping or countervailing duty.

Ordinary course of trade

There is no definition of what is the ordinary course of trade, s 269TAAD however defines sales that are not in the ordinary course of trade. In general, where Customs is satisfied that the price paid for like goods is less than the cost to make and sell, in arms length transactions, then the sales are taken not to have been made in the ordinary course of trade if these sales:

- have been for an extended period of time - usually considered to be a 12 month period but not less than 6 months;
- are in respect of a substantial quantity of the goods - 20% or more of the volume sold on the exporters domestic market or for exportation to a third country; and
- those costs are unlikely to be recovered within a reasonable period of time.

Preliminary affirmative determination (PAD)

A determination made by Customs not less than 60 days after the initiation of an investigation. Customs may impose provisional measures (in the form of securities) on imports of the goods if there is sufficient verifiable information available – and only after this determination has been made.

Provisional measures - securities

The provisional measures, taken as securities and after the issue of the PAD, are intended to prevent injury to the Australian industry pending the Minister's final decision. Provisional measures may also be collected in other circumstances, for example, a breach of an undertaking.

S. 42 to 45 provide the legal authority for Customs to require and take provisional measures, in the form of securities, and to refuse delivery of these goods until such time as the required security is given. Securities are collected on an individual shipment basis and in the case where securities have been imposed to protect the Australian industry during the investigation, continue to be collected until a recommendation is made to the minister.

Where the Minister accepts the recommendation to impose duties, current securities are converted to an interim duty liability. If the interim duty liability for the period of the final finding is less than the amount of securities collected, any additional security that has been collected is refunded.

Public file

A file maintained by Customs, in accordance with s. 269ZI, containing non-confidential information pertaining to anti-dumping and countervailing investigations. The file is held at:

Customs House

Trade Measures Branch

5 Constitution Avenue

Canberra City.

It is available for viewing and copying by all interested parties by contacting Trade Measures Office management staff on (02) 6275 6057.

Securities

See provisional measures.

Statement of essential facts

A statement placed on the public record at or before day 110 in the investigation process that sets out the facts on which Customs will base its recommendation to the Minister. The statement invites interested parties to respond to the issues raised therein.

Trade Measures Review Officer

Applicants may ask the TMRO to review Customs decisions in the case of:

- an application that is not accepted for investigation;

- the termination of an investigations; and
- a negative preliminary decision under s. 269Z.

The TMRO may confirm Customs initial decision or remit the matter to Customs for investigation. The TMRO does not perform an investigative function.

Interested parties may also ask the TMRO may also review certain ministerial decisions, such as

- the publication of a dumping duty notices; and
- a decision not to impose duty.

APPENDIX 2

STATEMENT OF FACTS AND EVIDENCE RELIED UPON

In formulating the recommendations in this report, Customs had regard to:

SECTION	TOPIC	MATERIAL FINDINGS OF FACT	EVIDENCE RELIED UPON TO SUPPORT THOSE FINDINGS
3	The goods under consideration	<ul style="list-style-type: none"> • SMBS was imported from Thailand and China during the investigation period. 	Information provided by Australian industry and other interested parties; Customs' commercial database.
4	The Australian industry	<ul style="list-style-type: none"> • There is an Australian industry producing like goods. • The application was supported by a sufficient part of the Australian industry. • Photographic grade of SMBS is not a like good. 	Information provided by Australian industry and other interested parties; responses to the Issues Paper and SEF.
5	The Australian market	<ul style="list-style-type: none"> • Market structure: suppliers of SMBS in the Australian market; market segments; channels of distribution. • Market size and market share. 	Information provided by Australian industry, importers and other interested parties; Customs' commercial database.
6	The dumping investigation	<ul style="list-style-type: none"> • Thai companies Thai Sulphites & Chemicals Co., Ltd (TSC) and Cowin Industry Co., Ltd (Cowin) exported the goods to Australia during the investigation period. • There was no dumping of the goods by TSC. • There was dumping of the goods by Cowin and the margin was not negligible. • The volume of dumped goods from Thailand was negligible. • There was dumping of the goods exported from China and neither the margin nor the volume was negligible. 	Information provided by Australian industry, exporters, importers and others; responses to TSC normal value report and SEF.

SECTION	TOPIC	MATERIAL FINDINGS OF FACT	EVIDENCE RELIED UPON TO SUPPORT THOSE FINDINGS
7	The economic condition of the industry	<ul style="list-style-type: none"> • The Australian industry suffered material injury. 	Information provided by Australian industry and other interested parties; responses to SEF; Customs commercial database.
8	Has dumping caused material injury?	<ul style="list-style-type: none"> • Dumped goods from Thailand could not have caused material injury. • Dumped goods from China have caused material injury. 	Information provided by Australian industry, other interested parties and others; responses to Issues Paper and SEF; Customs' commercial database.
9	Will dumping and injury continue?	<ul style="list-style-type: none"> • Future exports of SMBS from Thailand are not likely to be dumped to the extent of causing material injury to Incitec in the near future. • Future exports of SMBS from China are likely to be dumped to the extent of causing material injury to Incitec in the near future. 	Information provided by Australian industry, exporters, importers, other interested parties and others; responses to SEF; Customs' commercial database.
10	Anti-dumping measures	<ul style="list-style-type: none"> • Interim dumping duty will apply to imports of SMBS from China. 	Information provided by Australian industry and other interested parties; responses to SEF; Customs' commercial database.



Australian Customs Dumping Notice **No. 2002/05**

Sodium metabisulfite from The People's Republic of China

Preliminary Affirmative Determination & Imposition of Securities

The Australian Customs Service (Customs) commenced an investigation on 12 September 2001 after an application for anti-dumping duties lodged by Incitec Ltd. The investigation concerns the alleged dumping of sodium metabisulfite exported from The People's Republic of China (China) and Thailand. The tariff classification of the goods is 2832.10.00/25.

In accordance with s. 269TD of the *Customs Act 1901* (the Act), I have now determined that sufficient grounds have been established for the publication of a dumping duty notice for exports from The People's Republic of China.

In order to prevent material injury occurring to the Australian industry while the investigation continues, securities under s. 42 of the Act will be required in respect of any interim dumping duty that may become payable in respect of the goods exported from China and entered for home consumption on or after 4 February 2002.

Particulars of the dumping margins established and the method used to establish those margins, are set out below:

Country of export	Exporter	Dumping margin	Method of establishing
People's Republic of China	All exporters	86%	Export price s.269TAB(1)(c) Normal value s.269TAC(6)

In reaching this preliminary decision, Customs found:

- Imports of SMBS from China were dumped.
- The volume of dumped imports from China was not negligible in terms of s. 269TDA of the Act.
- Dumped imports from China have caused material injury to the Australian industry producing like goods.
- Customs is satisfied that future exports of SMBS from China are likely to be dumped to the extent of causing material injury to Incitec in the near future, as there is no evidence that the situation in respect of such exports from China is likely to change substantially.

A statement of essential facts was placed on the public record on 18 January 2002. The statement contained material findings of fact on which Customs proposes to base its final recommendation to the Minister. Interested parties have an opportunity to respond to the statement.

Customs is due to report to the Minister on 4 March 2002. The Minister will then decide whether measures are to be imposed and if so, the level of the measures. Depending on the Minister's decision, preliminary measures may be converted to interim duty or refunded.

Enquiries concerning this notice may be directed to Mr Brian Henry on telephone number (02) 6275 6016 or fax number (02) 6275 6990.

SUE PITMAN
National Manager
Trade Measures Branch
CANBERRA ACT
4 February 2002