



Australian Government
Australian Customs Service

AUSTRALIAN CUSTOMS SERVICE
CUSTOMS ACT 1901 – PART XVB

TRADE MEASURES BRANCH
REPORT NO. 78

RECONSIDERATION OF CUSTOMS' FINDINGS ON

GALVANISED STEEL PIPE

EXPORTED FROM THAILAND

27 February 2004

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1 SUMMARY

Customs has reconsidered its findings on the causal link between exports of galvanised steel pipe from Thailand by Saha Thai Steel Pipe Company Limited (Saha) and material injury to the Australian industry set out in its reinvestigation report of 28 February 2003.

Customs' reconsideration of the reinvestigation findings is a consequence of consent orders made by the Federal Court on 18 December 2003.

Having reconsidered the matter, Customs considers that the Minister should be satisfied that the dumping of galvanised steel pipe exported to Australia from Thailand, including pipe exported by Saha, caused material injury to the Australian industry.

Customs recommends that the Minister affirm his decision, made following the original investigation, to publish dumping duty notices in respect of all exporters of galvanised steel pipe from Thailand.

2 BACKGROUND TO THE RECONSIDERATION

On 28 February 2003, Customs reported to the Minister on its reinvestigation into the dumping of certain galvanised steel pipe exported to Australia from Thailand. A copy of Customs' report (the reinvestigation report) is at **Attachment 1**. Customs conducted the reinvestigation after the Trade Measures Review Officer recommended that the Minister direct Customs to reassess certain findings from its original investigation in respect of material injury and causal link.

On 2 May 2003, the Minister accepted the recommendation contained in Customs' reinvestigation report to:

- revoke the decision to publish dumping duty notices in respect of galvanised steel pipe exported to Australia from Thailand; and
- substitute a new decision to publish a dumping duty notice in respect of galvanised steel pipe exported to Australia from Thailand other than exports from Saha.

The Minister's decision had the effect of excluding the Thai exporter, Saha, from the dumping measures and affirming the decision to impose dumping measures on all other Thai exporters. Following the reinvestigation, Customs recommended that Saha be excluded from the measures as, although Saha had exported some shipments of the product at dumped prices, its weighted average dumping margin over the entire investigation period was negative.

The Minister's acceptance of Customs' recommendation reversed the finding of dumping against Saha in the original investigation (Trade Measures Report No.11) which Customs based on an analysis of dumping broken down by the six quarters of the eighteen month investigation period.

In its reinvestigation report, Customs recommended that the Minister should be satisfied that exports of galvanised steel pipe at dumped prices (by exporters other than Saha) had caused material injury to the Australian industry producing like goods.

In July 2003, OneSteel Trading Pty Ltd (OneSteel) sought a review by the Federal Court of Customs' recommendation of 28 February 2003 and of the Minister's decision of 2 May 2003. In effect, the basis of OneSteel's challenge was that Customs and the Minister were not authorised to reverse the finding made in the original investigation that Saha had exported goods at dumped prices. The TMRO's recommendation for reinvestigation and the Minister's direction to Customs related only to causal link and material injury.

On 18 December 2003, the Federal Court made consent orders to:

- set aside the recommendation of Customs of 28 February 2003, insofar as it related to exports from Saha, with effect from the date of the consent orders;
- set aside the Minister's decision of 2 May 2003, with effect from the date of the consent orders; and
- have Customs and the Minister reconsider the above decisions.

Further background to the galvanised steel pipe case, Customs original investigation and a detailed description of the goods the subject of the investigation can be found in Customs' reinvestigation report at **Attachment 1**.

3 CUSTOMS' RECONSIDERATION

3.1 The scope of the reconsideration

The consent orders made by the Federal Court on 18 December 2003 set aside Customs' reinvestigation recommendations only insofar as they related to Saha. In other words, Customs is not required to reconsider the causal link found to exist between dumping and material injury for the other Thai exporters.

In accordance with the Minister's direction to Customs of 26 November 2002 to reinvestigate, Customs must address only the issue of causation and material injury. The Minister's decision to be satisfied that all Thai exporters had exported galvanised steel pipe to Australia at dumped prices is not the subject of further investigation.

Customs is required to reconsider whether the dumping of galvanised steel pipe from Saha caused or threatened to cause material injury to the Australian industry producing like goods.

3.2 Aggregation of the effect of exports

Until recently amended, subsection 269TAE(2C) of the *Customs Act 1901* (the Act), dealt with whether the Minister could consider the cumulative effect of the exportation of goods by different exporters from the same country of export or exports from different countries when assessing if the exports had caused or threatened to cause material injury. The provision set out matters that the Minister was required to consider in deciding if it was appropriate to consider the cumulative effect of the exports. In the original investigation, the Minister was satisfied that it was appropriate to consider the cumulative effect of the exportations of the different Thai exporters.

Legislative amendments in December 2003 removed the reference to 'different exporters from the same country of export' from subsection 269TAE(2C). The amendments have brought Australia's anti-dumping legislation into line with the WTO Anti-dumping Agreement which requires only that certain matters be considered before deciding to cumulate the effect of imports from different countries of export. The Agreement does not require that certain matters be considered before cumulating the effect of exports from different exporters in the same country of export. The WTO refers to combining the effect of exports from the same country of export as 'aggregation'. In all cases, authorities consider whether the aggregated effect of exports from a country of export has caused or threatened to cause injury to the Australian industry.

Therefore, Customs has reconsidered whether the aggregated effect of the dumped goods from Thailand caused material injury to the Australian industry. In contrast to the reinvestigation report, the volume of the dumped goods includes exports by Saha found to be dumped in the original investigation.

Customs recognises that, to comply with the terms of the consent order, the outcome of the reconsideration relates only to Saha, notwithstanding that the reconsideration will necessarily encompass all exporters and the aggregated effect of their dumped exports on the Australian industry.

3.3 The reconsideration process

Customs advised interested parties of the reconsideration but did not seek further submissions. Nevertheless, Customs received and considered four submissions: two made on behalf of CMC (Australia) Pty Limited (CMC) and Saha, an importer and exporter, respectively, of galvanised steel pipe from Thailand; and two by OneSteel Ltd (OneSteel), the successor to Tubemakers of Australia, the applicant for dumping duties. Customs also considered submissions made to the reinvestigation completed on 28 February 2003.

Submissions by CMC and Saha

The submissions by CMC and Saha reiterated the following points made in earlier submissions to Customs:

- that Customs failed by not taking additional steps to establish the impact of imports from other sources on the Australian industry;
- that Customs did not take into account reports of the Prices Surveillance Authority and the Australian Competition and Consumer Commission dated late 1995; and
- that, when calculated according to Customs' current practice and policy, Saha's exports were demonstrably undumped.

CMC and Saha also claimed that Customs erred in its finding that the locally produced and Thai goods were clearly substitutable in the Australian market place. CMC and Saha claimed that the Thai goods could not substitute for the Australian product as they did not meet the appropriate Australian standard for structural applications.

Customs' comments

Customs endorses its findings regarding the effect of imports from other sources and the matters raised in reports dealing with the export performance and productivity of the Australian industry as set out in the reinvestigation report.

The Minister's decision to be satisfied that all Thai exporters had exported galvanised steel pipe to Australia at dumped prices is not a finding that is subject to reinvestigation.

In its original investigation (Trade Measures Report No.11), Customs considered whether the goods produced by the Australian industry were substitutable with the Thai imports, both in terms of whether there was an Australian industry producing like goods and whether the Thai imports had the capacity to cause material injury to the Australian industry. Customs remains of the view that the locally produced goods and the Thai exports the subject of the investigation were substitutable in the Australian market.

Submission by OneSteel

OneSteel stated that material injury to the Australian industry was substantially driven by growth in imports from Thailand. OneSteel stated that increased volumes of product from Thailand had coincided with the Australian industry suffering declines in profit and profitability as well as price suppression, price depression and loss in market share.

Customs' comments

Customs notes that OneSteel's submission essentially repeats points made in earlier submissions and does not provide new matters for Customs to consider.

3.4 Volume of dumped goods

Customs' reinvestigation completed on 28 February 2003 examined whether dumping had caused material injury after excluding goods exported by Saha from the volume of dumped goods. The Minister did not direct Customs to reinvestigate the original dumping findings. Customs must reconsider the causal link issue taking into account the dumping findings from the original investigation. The following table sets out the market share held by exports to Australia from Thailand (including exports by Saha).

	1996-97	1997-98	1998-99
As a percentage of total Australian market	1.6%	13.1%	7.1%
As a percentage of total imports	12.1%	60.4%	32.2%

3.5 Injury caused by dumped goods from Thailand

Customs' original investigation concluded that dumped goods from Thailand had caused material injury to the Australian industry. In summary, Customs' finding was based on the following factors:

- exports of galvanised steel pipe to Australia from Thailand were dumped by margins ranging from zero to 50 percent;
- the volume of dumped imports from Thailand had increased from less than 2 per cent of the Australian market in 1996/97 to 13% in 1997/98 which coincided with a fall in the Australian industries market share from 86.5% to 78% (the percentage of the Australian market supplied by exports from other countries fell in 1997/98 over 1996/97);
- in almost every instance the Australian industry's selling prices had been undercut by the selling price of dumped goods from Thailand;

- the marked increase in dumped goods from Thailand in 1997/98 which undercut the prices of goods sold by the Australian industry coincided with material injury to the Australian industry (most prominent from December 1997) in the form of substantial price depression, price suppression, loss of sales, loss of market share and reduced profits and profitability;
- an analysis of other possible causes of injury, although hampered by a lack of co-operation from parties not directly involved in the investigation, did not cause Customs to conclude that it had attributed any injury caused by other factors to the dumped goods from Thailand.

Following the reinvestigation, Customs endorsed its finding that dumped goods from Thailand had caused material injury to the Australian industry. The finding excluded exports from Saha as Customs had considered these exports not to be dumped. The reinvestigation report sets out Customs' consideration of whether any injury to the industry was being caused by a factor other than the exportation of goods from Thailand at dumped prices. Customs' consideration of the impact of other factors set out in the reinvestigation report is not altered by the inclusion of exports by Saha in the volume of dumped goods.

Also, the inclusion of Saha's exports in the volume of dumped goods reinforces Customs' conclusion that the dumped goods from Thailand caused material injury to the Australian industry producing like goods. Customs remains of the view that its examination of all relevant evidence available to it demonstrates a causal link between the dumping of goods from Thailand and material injury to the Australian industry.

An important consideration for Customs was how the significant increase in imports of dumped goods from Thailand at prices undercutting those of the Australian industry corresponded with the onset of significant injury to the Australian industry in the forms set out above. The market share of imports from other countries, proposed by some parties to be a possible alternative cause of injury, declined in 1997/98 compared to 1996/97. These factors allowed Customs to reasonably conclude that the dumped goods from Thailand had caused a material amount of injury to the Australian industry producing like goods.

Customs did not have sufficient information to reach a conclusion on whether other factors, particularly imports from countries other than Thailand, were also causing injury to the Australian industry. It is not necessary for the Minister to be satisfied that dumping from Thailand is the sole or even the dominant cause of injury, only that the injury caused by the dumping from Thailand is material.

4 CONCLUSIONS AND RECOMMENDATIONS

Customs concludes that the Minister should be satisfied that exports of galvanised steel pipe from Thailand, of themselves, caused material injury to the Australian industry.

Customs recommends that the Minister affirm his decision, made following the original investigation, to publish dumping duty notices in respect of all exporters of galvanised steel pipe exported to Australia from Thailand.

**AUSTRALIAN CUSTOMS SERVICE
CUSTOMS ACT 1901 – PART XVB**

RE-INVESTIGATION OF CUSTOMS' FINDINGS

GALVANISED STEEL PIPE

EXPORTED FROM

THAILAND

February 2003

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ABBREVIATIONS

CMC	CMC (Australia) Pty Limited
Customs	Australian Customs Service
First Steel	First Steel Industry Company Limited
FOB	free-on-board
galvanised steel pipe	hot dip galvanised, welded, circular hollow section, steel pipe in nominal sizes DN 15-100
Korea	Republic of Korea
OneSteel	OneSteel Ltd
Pacific Pipe	Pacific Pipe Company Limited
Saha	Saha Thai Steel Pipe Company Limited
Minister	Minister for Justice and Customs
TMRO	Trade Measures Review Officer
Tubemakers	Tubemakers of Australia Limited

1 SUMMARY

The Minister for Justice and Customs (the Minister) directed the Australian Customs Service (Customs) to reconsider its findings on the causal link between the dumped goods and material injury to the Australian industry in accordance with the advice he received from the Trade Measures Review Officer (TMRO) on 30 September 2002 and to report the results of the re-investigation to him by no later than 23 December 2002.

As a result of several requests by interested parties for an extension of time within which to make submissions to Customs, the Minister agreed to extend the time by which Customs must report to 28 February 2003. Customs then invited interested parties to make submissions by 24 January 2003.

Customs also requested information on the volume and price of Australian sales of galvanised steel pipe during the period 1 July 1996 to 31 March 1999 ('injury analysis period') from major importers of galvanised steel pipe from the Republic of Korea (Korea) and Indonesia during the injury analysis period. The importers did not provide the information requested.

On 11 February 2003 a statement of the findings upon which Customs proposed to base its recommendation to the Minister ("statement of findings") was sent to interested parties. Submissions in response to the statement of findings were received from OneSteel Ltd (OneSteel)—the successor to Tubemakers of Australia Limited (Tubemakers); Pacific Pipe Company Limited (Pacific Pipe) and CMC (Australia) Pty Limited (CMC).

Customs examined material collected during its initial investigation and submissions made by interested parties to this re-investigation.

This report sets out:

- the finding or findings the subject of the re-investigation which Customs proposes to affirm;
- any new finding or findings Customs proposes to make as a result of the re-investigation;
- the evidence on which the proposed new finding or findings are based; and
- the reasons for Customs proposed decision.

Customs notes that:

- the weighted average dumping margins over the investigation period of both First Steel Industry Company Limited (First Steel) and Pacific Pipe were significant and positive; and
- the weighted average dumping margin over the investigation period for Saha Thai Steel Pipe Company Limited (Saha) was negative.

Customs affirms its findings:

- that imports of galvanised steel pipe from Thailand at dumped prices, of themselves, caused and threatened material injury to the Australian industry— noting that Customs now considers that imports from Saha should not be treated as dumped goods in assessing whether dumped goods were causing material injury to the Australian industry;
- that it does not have information on the volume and price of Australian sales of the goods imported from Korea and Indonesia during the period 1 July 1996 to 31 March 1999 to determine whether those imports also caused injury to the Australian industry; and
- that it has not attributed injury caused by other factors to dumped goods exported from Thailand.

Customs does not have sufficient information to determine whether any injury to the Australian industry was caused or threatened by other factors including:

- ‘restrictive trade practices of, and competition between, foreign and Australian producers of like goods’;
- developments in technology; and
- export performance and productivity of the Australian industry.

Customs considers that the Minister should be satisfied that imports of galvanised steel pipe by First Steel and Pacific Pipe at dumped prices, of themselves, caused or threatened material injury to the Australian industry.

Customs recommends that the Minister:

- revoke the decision to publish dumping duty notices in respect of galvanised steel pipe exported to Australia from Thailand; and
- substitute a new decision to publish a dumping duty notice in respect of galvanised steel pipe exported to Australia from Thailand other than exports from Saha.

2 INTRODUCTION

2.1 Background to this re-investigation

On 6 April 1999, Customs received an application from Tubemakers for the publication of a dumping duty notice in respect of certain galvanised steel pipe exported to Australia from Thailand. Customs initiated an investigation on 27 April 1999. In notifying of the investigation, Customs advised that:

- to determine whether dumping had occurred, it would examine exports of the goods to Australia from Thailand during the period 1 July 1997 to 31 March 1999; this period was chosen because the Australian industry had claimed that material injury was most evident since late 1997 and 31 March 1999 was the most recent financial quarter before initiation; and
- to determine whether injury was occurring it would examine the longer period of 1 July 1996 to 31 March 1999.

Details of Customs' investigation and recommendations are in Trade Measures Report No. 11.

On 17 February 2000 the former Minister's decision to impose anti-dumping measures on galvanised steel pipe exported from Thailand was published.

Subsequently the exporters of galvanised steel pipe from Thailand applied to the TMRO for review of the former Minister's decision.

In seeking review the exporters claimed that the Minister could not be satisfied that there was a causal link between the material injury experienced by the Australian industry and imports from Thailand and that other possible causes of injury were not considered.

The TMRO recommended that the Minister direct Customs to re-assess Customs' findings in respect of causal link and material injury.

On 25 August 2000 the former Minister notified acceptance of the TMRO's recommendations. The former Minister directed Customs to report the result of the further investigation by 22 October 2000.

Customs conducted its further investigation and submitted its report to the former Minister. On 9 November 2000 pursuant to s. 269ZZM the former Minister decided to affirm the imposition of anti-dumping measures. This decision was notified on 5 January 2001.

In April 2001, CMC, an importer of galvanised steel pipe from Thailand, sought a review of this decision in the Federal Court. In December 2001, the Minister agreed to consent orders to set aside the former Minister's decision of 9 November 2000.

On 30 September 2002 the TMRO advised the Minister that the scope of the TMRO's original recommendation to require Customs 'to re-investigate the findings of causal

link and material injury, was only to the extent that it would have been necessary to re-investigate the issue of causation’.

2.2 Re-investigation process

The Minister directed Customs to reconsider its findings on the causal link between the dumped goods and material injury to the Australian industry in accordance with the advice he received from the TMRO and to report the results of the re-investigation to him by no later than 23 December 2002.

As a result of several requests by interested parties for an extension of time within which to make submissions to Customs, the Minister agreed to extend the time by which Customs must report to 28 February 2003. Customs then invited interested parties to make submissions by 24 January 2003.

After receiving the report on Customs’ re-investigation the Minister must either:

- affirm the decision to publish dumping duty notices in respect of galvanised steel pipe exported to Australia from Thailand; or
- revoke that decision and substitute a new decision.

In accordance with s. 269ZZM(3), the Minister may, among other things:

- publish a dumping duty notice;
- vary a dumping duty notice; or
- revoke a dumping duty notice and substitute another dumping duty notice (as the case requires).

The Minister’s decision takes effect from the time specified by the Minister and must be notified by public notice.

2.3 The goods

The goods covered by this re-investigation are hot dip galvanised, welded, circular hollow section, steel pipe in nominal sizes DN 15 to 100 exported to Australia from Thailand. The DN number is a nominal measure of the diameter of the pipe’s bore.

The goods are produced to British Standard BS 1387, which is equivalent to Australian Standard AS 1074.

The goods are manufactured from hot rolled coil, being rolls of flat steel. The coil is first slit into a number of desired widths and recoiled. Then, in one process, the flat steel is uncoiled, formed into a cylinder, welded along the seam, sized to the required standard and cut into lengths of ‘black’ pipe.

Black pipe is galvanised by placing it in an acid bath and then coating it internally and externally by immersing it in a zinc bath. The length of time spent in the zinc determines the thickness of the coating and the protection given to the pipe. On

being withdrawn from the zinc bath, the pipe may be air blown to remove excess zinc and produce a clean finish.

Each nominal size of pipe can be produced in one of four grades: extra-light, light, medium and heavy. The grade determines the wall thickness, with extra-light being the thinnest and heavy being the thickest.

Most galvanised steel pipe is produced with plain, threaded or threaded and coupled ends. Threaded and coupled pipe, also called screwed and socketed, is pipe threaded at both ends with a coupling on one end. The coupling is removable. There are other end-types, however they represent a very small proportion of the pipe sold in the Australian market. Of the goods exported to Australia from Thailand during the investigation period, all had one of the three end-types listed above.

Galvanised steel pipe is classified under sub-heading 7306.30.00 in Schedule 3 to the *Customs Tariff Act 1995*. The developing country rate of duty applicable to imports from Thailand is 4%.

3 CUSTOMS' ORIGINAL INVESTIGATION

In its original investigation Customs found that exports of galvanised steel pipe from Thailand had been at dumped prices and that dumped exports of galvanised steel pipe from Thailand had caused material injury to the Australian industry producing galvanised steel pipe.

Customs found that the Australian industry had suffered material injury for the following reasons:

- the imported goods from Thailand consistently undercut the Australian industry's prices during the period May 1997 to March 1999;
- the Australian industry's prices had been severely depressed since the December quarter 1997;
- the Australian industry experienced price suppression from the December quarter 1997 to the December quarter 1998, despite the receipt of rebates on steel purchases from the March quarter 1998 onwards;
- the Australian industry lost sales and market share;
- the profits and profitability of the Australian industry suffered throughout the period examined by Customs except for the March quarter 1999 when rebates from the supplier of hot rolled coil were increased.

Customs found imports of galvanised steel pipe from Thailand at dumped prices had caused material injury to the Australian industry for the following reasons:

- coinciding with price undercutting, the Australian industry's prices had been severely depressed since the December quarter 1997;
- in 1997-98 the reduction in the industry's market share coincided with the increase in market share for the Thai imports; and
- the deterioration in the Australian industry's profitability was contemporaneous with the increase in dumped imports of galvanised steel pipe from Thailand.

Although Korea was not covered by the application Customs had attempted to examine imports from that country as part of testing causal link and also in assessing an unsuppressed selling price for the Australian industry. However Customs received little cooperation from importers of the Korean product. Without information on selling prices of imports from Korea in the Australian market Customs was unable to determine whether those imports contributed to the injury suffered by the Australian industry.

Customs also considered whether the injury to the Australian industry had been caused by other factors. It was satisfied that it had not attributed any injury caused by other factors to the goods exported from Thailand.

4 THE TMRO'S RECOMMENDATIONS

The TMRO recommended that “the Minister require the CEO of the Australian Customs Service, in respect of material injury and causal link, to re-assess Customs’ findings’.

The reasons given by the TMRO in making that recommendation were:

- the TMRO did not accept Customs’ finding that the material injury suffered by the Australian industry could be attributed solely to imports from Thailand at dumped prices;
- the TMRO did not accept Customs’ assessment that it had not attributed any injury caused by other factors because Customs was able to obtain FOB prices for imports from Korea and such information should have been considered by Customs as part of its obligation under s. 269TAE(2A);
- the TMRO noted that Customs finding that the Australian industry still suffered injury after the replacement of imports from Thailand in the Australian market place was a significant factor, indicating that other causes of material injury might have existed; and
- the TMRO did not accept that Customs could have been satisfied under s. 269TAE(2A)(d), in that it did not consider other contributing factors in the market such as restrictive trade practices when making its assessment of material injury.

5 RE-INVESTIGATION

5.1 Extent of re-investigation

As the applicants had applied to the TMRO for a review of causation, not material injury, Customs sought legal advice regarding the scope of the TMRO's recommendation. Customs was advised that as its findings on 'material injury' *per se* were not raised in the application for review, Customs was not obliged to re-investigate material injury itself. Customs' findings on 'material injury' may only be the subject of the requirement for re-investigation to the extent they are relevant to the issue of 'causation'.

On 30 September 2002 the TMRO advised the Minister that the scope of the TMRO's original recommendation to require Customs 'to re-investigate the findings of causal link and material injury, was only to the extent that it would have been necessary to re-investigate the issue of causation'.

5.2 Causation

The Minister is required to be satisfied, in accordance with s. 269TG and s. 269TAE, that material injury has been, is being caused, or is threatened, to an Australian industry 'because of' dumped imports. Under s. 269TAE Customs must consider whether detriment has been or is being caused by factors other than the dumped imports and the detriment caused by these factors must not be attributed to the dumped imports. Article 3.4 of the WTO Agreement also refers.

The Federal Court in *ICI v Anti-Dumping Authority and Fraser* (1992) 106 ALR 258 made the following comments on the relationship between s. 269TG and s. 269TAE and the ultimate issue for the Minister to determine.

The object of the 1975 legislation is to protect Australian industry (see *Tasman Timber Ltd and Others v. Minister for Industry and Commerce and Anor*, at p 151 and *Feltex Reidrubber Ltd v. Minister for Industry and Commerce and Anor* (1983) 46 ALR 171 at 182) by providing relief from the anti-competitive effects that dumped goods may have on domestic producers, whilst at the same time ensuring that protective measures adopted by the imposition of duties do not unjustifiably impede international trade. This object is to be achieved by imposing dumping duty which does not exceed the dumping margin (sub-s 8(4)), and may be less (sub-s 8(5)), for so long only as the dumping, or threat of dumping, will cause material injury to an Australian industry. The relationship required between the dumping and material injury to an Australian industry is therefore a close one. The material injury against which the Act provides relief is the material injury attributable to the dumping, and to no other cause.

Subsequent amendments include the enactment of provisions now contained in sub-s 269TAE(1), and the ADA Act. ... The provisions of the sub-section, read with sub-s. 269TG(1), make clear that the subject matter of sub-s. 269TG(1), is not material injury to an Australian industry in the abstract, but material injury causally connected to, 'by reason of' or 'because of', dumping. By whatever steps the deliberations occur during which the Minister has regard to the matters relevant to the determination of 'material injury', whether they be matters enumerated in sub-s 269TAE(1) or otherwise, the ultimate issue for the Minister is whether he or she is satisfied that there has been material injury causally connected in the manner required by the legislation to the dumping of goods that have been exported to Australia.

The 'material injury' to an Australian industry contemplated by sub-s. 269TG(1) is material injury which is the consequence of the dumping of the goods that have been exported to Australia.

Section 269TG is not concerned with detriment which the Australian industry under consideration may have suffered from causes other than dumping, for example declining demand due to economic recession, industrial unrest, or insufficient raw materials to permit the achievement of anticipated production output.¹

The Federal Court judgement shows that although detriment may have been caused by other factors Customs must find whether dumped imports, of themselves, caused material injury to the Australian industry.

In its *Conclusions and Recommendations*, the TMRO stated that it:

- 'does not accept Customs' findings in relation to First Steel that ...there were no factors other than the exportation of First Steel's goods that could have caused or threatened to cause material injury to the Australian industry' (page 1);
- 'accepts Customs finding that dumped imports from Thailand have caused injury to the Australian industry producing (the goods)' (page 11); and
- 'does not accept Customs' finding that the material injury suffered by the Australian industry can be attributed solely to these dumped imports' (page 11).

In relation to the first point, Customs at no stage concluded that there were *no factors* other than the dumped imports from Thailand that could have caused injury or detriment to the Australian industry. Rather, Customs stated on page 36 of Report No. 11:

Based on the available evidence, Customs has considered whether the injury to the Australian industry is being caused by other factors. Customs is satisfied that it has not attributed any injury caused by other factors to the goods exported from Thailand.

Customs did not (and is not required to) find that dumped imports were the sole, in the sense of exclusive, cause of all of the detriment suffered by Australian industry.²

In relation to the second and third points, the TMRO's terminology and the distinction drawn between 'injury' and 'material injury' appears to indicate that the TMRO accepted dumped imports caused 'injury' but did not accept Customs finding that 'material injury' was caused by the dumped imports. The TMRO's rejection of Customs finding appears to have been based on its view that Customs had not sufficiently examined 'other factors' that might have contributed to the detriment suffered by the Australian industry in order to allow it to conclude that the dumped imports, of themselves, caused or threatened material injury.

¹ *ICI v Anti-Dumping Authority and Fraser* (1992) 106 ALR 258, 263-5.

² 106 ALR 258, 271.

In this re-investigation Customs has focussed on whether material injury to the Australian industry, within the meaning of s. 269TG, was caused or threatened because of dumped imports from Thailand. In doing so, Customs considered:

- which exports of the goods from Thailand were dumped;
- whether dumped goods, of themselves, caused material injury to the Australian industry; and
- whether any detriment to the Australian industry was caused by any factor other than dumped imports so that detriment caused by other factors are not attributed to dumped imports.

Customs examined material collected during its initial investigation and submissions made by interested parties to this re-investigation.

5.3 Injury caused by dumped imports from Thailand

5.3.1 Initial investigation

During its initial investigation, which was initiated on 27 April 1999, Customs examined exports of galvanised steel pipe from 1 July 1997 to 31 March 1999 to determine whether dumping had occurred. It examined the Australian market from 1 July 1996 to 31 March 1999 to determine if the Australian industry had suffered injury. Customs found that the Australian industry had suffered injury in the form of:

- price undercutting;
- price depression;
- price suppression;
- loss of sales;
- loss of market share; and
- reduced profits and profitability.

Customs was satisfied that when considered in total the injury was material.

Customs found that in 1997-98 the Australian market rose by 14%. In that year the market share held by imports from Thailand rose 11 percentage points, from 2% to 13%, while the market share held by the Australian industry fell 8 percentage points, from 86% to 78%.

Customs found that in 1998-99 the Australian market fell by 6%. In that year the market share held by Australian industry remained at 78%. The market share held by imports from Thailand fell to 7%. Customs also found that imports from Thailand were replaced by imports from Korea and Indonesia, but Thailand remained the largest source of imports of galvanised steel pipe.

The low prices of imports from Thailand undercut the Australian industry's prices between May 1997 and March 1999. The price undercutting analysis compared the Australian industry's selling prices to distributors with the landed duty paid into store cost to the importers distributors. Customs stated in its original report that as most imports are indent sales, the landed duty paid into store cost is the cost into the ultimate customer's store.

The Australian industry also experienced price depression, price suppression and reduced profits and profitability until the end of 1998. There was a turn around in the Australian industry's performance in the March quarter of 1999.

The increase in volume of imports from Thailand in 1997-98 coincided with the downturn in the performance of the Australian industry. The Australian industry's performance did not recover in the first six months of 1998-99. Its performance improved in the March quarter of 1999. Customs attributed this improved performance to an additional rebate on purchases of hot rolled coil.

Imports from Thailand accounted for almost 40% of the volume of all imports between 1996-97 and 1998-99. As a consequence of the preceding findings, Customs considered it reasonable to conclude that dumped imports from Thailand, of themselves, caused and threatened material injury to the Australian industry during this period.

5.3.2 Re-investigation

The Minister directed Customs to reconsider its findings on the causal link between the dumped goods and material injury to the Australian industry to the extent that it is relevant to causal link, in accordance with the advice he received from the TMRO.

Customs:

- re-examined all material from its original investigation relevant to the issue of whether dumped imports from Thailand caused material injury to the Australian industry;
- requested information on the volume and price of Australian sales of galvanised steel pipe during the period 1 July 1996 to 31 March 1999 ('injury analysis period') from major importers of galvanised steel pipe from Korea and Indonesia during the injury analysis period—the importers did not provide the information requested; and
- considered all submissions made by interested parties in relation to this re-investigation.

5.3.2.1 Dumped goods

Representatives of CMC submitted that:

- 'if Customs had not analysed exports from Saha ... on a quarterly basis, no finding of dumping would have been made' in relation to those exports; and

- as exports from Saha were not dumped, Customs erred in cumulating exports from Saha with dumped exports in assessing material injury and causation.

Pacific Pipe also raised this issue in its submission.

In conducting this re-investigation, Customs was directed to reconsider the issue of whether dumped goods caused material injury to the Australian industry. Three elements have to be addressed to comply with that direction—are the goods dumped, material injury and the causal link between those dumped goods and material injury.

As noted above, the TMRO clarified that the scope of the TMRO's original recommendation to require Customs 'to re-investigate the findings of causal link and material injury, was only to the extent that it would have been necessary to re-investigate the issue of causation'. Similarly, Customs has looked at the issue of dumped goods to the extent necessary to reconsider the issue of whether *dumped goods* have caused material injury to the Australian industry. Dumping margins were not recalculated.

In Report No. 11, Customs found that the weighted average dumping margin for Saha over the investigation period was negative (-4.8%). Unless there are exceptional circumstances, Customs uses the weighted average dumping margin over the investigation period to determine whether or not dumping has occurred: s 269TACB(2)(a). This is consistent with Article 2.4.2 of the WTO Anti-Dumping Agreement.

Customs stated on page 21 of Report No. 11 that:

In summary, the negative margins in the earlier periods coincided with the severe devaluation of the Baht against the USD. Since that time the Baht has recovered and there has been a trend towards dumping. Given the fluctuations of the Baht over the period examined and its effect on price comparison, Customs is of the view that the quarterly examination of dumping margins is the most appropriate.

On the basis of this quarterly dumping margin analysis, Customs found that exports of the goods by Saha were dumped and recommended in Report No. 11 that measures be imposed on exports by Saha.

Customs decision to use a quarterly dumping margin analysis was based on the short term fluctuation in the USD:Baht exchange rate in December 1997. Section 269TAF and Article 2.4.1 of the WTO Anti-dumping Agreement provide that short term fluctuations in exchange rates should be ignored when making a fair comparison between export price and normal value.

Customs considers that the exports from Saha should not be included in assessing material injury and causation. Customs has therefore removed exports of the goods by Saha from its analysis of whether *dumped imports* caused material injury to the Australian industry. The market share of dumped imports before and after excluding imports from Saha is set out in the following table.

	1997–98	1998–99
As a percentage of total Australian market		
Report No. 11 (all exports from Thailand)	13.1%	7.1%
Re-investigation (excluding exports from Saha)	7.48%	4.81%
As a percentage of total imports		
Report No. 11 (all exports from Thailand)	60.4%	32.2%
Re-investigation (excluding exports from Saha)	34.45%	21.78%

In the original investigation, Customs included a shipment from First Steel exported before the investigation period, which commenced on 1 July 1997.

Pacific Pipe, in its submission to the re-investigation, submitted that First Steel's 'sales prior to the investigation period' should not be taken into consideration, as the date of sale is alleged to have occurred before the investigation period commenced.

Customs was unable to determine whether the First Steel shipment in early 1997 was dumped, as normal values are only calculated for the investigation period.

Customs considers it is not appropriate to take this shipment into account in assessing whether dumped goods were causing material injury to the Australian industry.

If the shipment from First Steel in early 1997 (and exports of the goods by Saha) were removed from the analysis, the percentage of the market represented by dumped goods from First Steel in 1997-98 would be 5.05%, which Customs considers is material.

5.3.2.2 Cumulation

CMC and Pacific Pipe submitted that exports from Saha should not be cumulated in assessing whether dumped goods were causing material injury to the Australian industry. CMC also submitted that exports from First Steel should not be cumulated.

For the reasons set out above, Customs considers that exports of the goods from Saha should not be treated as dumped goods in assessing whether dumped goods were causing material injury to the Australian industry.

Dumped imports from Thailand in 1997–98 were from First Steel and in 1998–99 were from Pacific Pipe. The effect of these imports were separately analysed. The percentage of the market represented by dumped goods from Thailand (ie First Steel) in 1997-98 would be 7.48% (or 5.05%, if the shipment exported in early 1997 was excluded). The percentage of the market represented by dumped goods from Thailand (ie Pacific Pipe) in 1998-99 would be 4.81%. Customs considers the volume of dumped goods from Thailand in each year is material.

As First Steel and Pacific Pipe were not exporting the goods to Australia during the same period, Customs considers it is not necessary to consider the cumulative effect of the exportations of goods by different exporters in assessing whether dumped goods were causing material injury to the Australian industry.

5.4 Other possible causes of injury

5.4.1 Other imports

Section 269TAE(2A) requires the Minister to consider whether any injury to the Australian industry is being caused or threatened by a factor other than dumped imports from Thailand. If such injury exists, that injury must not be attributed to dumped imports.

One of the factors set out s. 269TAE(2A) is 'the volume and prices of imported like goods that are not dumped'.

5.4.1.1 Initial investigation

The Australian Steel Association represents the importers CMC and Thyssen Mannesmann Trading Pty Ltd and the exporters Pacific Pipe and Saha. It claimed that the volume of imports from Korea was equal, if not greater than, the volume of imports from Thailand. It further claimed that the price of galvanised steel pipe from Korea was similar to the price of such pipe from Thailand. Therefore, it claimed that the injury suffered by the Australian industry was not caused by imports of galvanised steel pipe from Thailand.

First Steel claimed that imports of galvanised steel pipe from Thailand at dumped prices did not of themselves cause material injury to the Australian industry. It claimed that Customs attributed injury caused by other factors to the injury suffered by the Australian industry. These other factors were the volume and price of imports from other countries. First Steel claimed that Customs found that from late 1997 to March 1999, the period during which material injury experienced by the Australian industry was most evident, imports from Thailand decreased significantly in absolute and relative terms while at the same time those from other countries increased significantly.

As Customs did not undertake a dumping investigation into imports from countries other than Thailand, Customs could not determine whether imports from other countries were dumped.

Customs attempted to examine the effect of imports of galvanised steel pipe from Korea during its initial investigation. It made enquiries with relevant importers but received limited cooperation. Customs was not able to obtain information on selling prices in the Australian market of imports from Korea or any other imports. Therefore, Customs was unable to determine whether these imports caused any injury to the Australian industry.

Customs did have access to stated free-on-board (FOB) prices for imports of galvanised pipe from Korea from its commercial database. However, Customs considers that such FOB price data would have had no relevance to the assessment

of injury because the relevant point for comparison was the landed duty paid into store cost (ie the selling price to customers), not the FOB prices. For example, FOB unit prices may be the same from country A (being the country named in the dumping application) and from country B, but this gives no guide to the respective selling prices in the market, as importers may take different profits.

In the absence of information in respect of the selling prices in the Australian market of imports from Korea or any other country, Customs concluded that it did not have sufficient information to

...draw any conclusion regarding the influence of Korean imports, or any other imports, may have on the market price'. Further, Customs (was) unable to draw a conclusion on whether those imports may have contributed to the injury suffered by the Australian industry.

5.4.1.2 Re-investigation

Imports from other countries

Pacific Pipe and First Steel reiterated previous submissions regarding the effects of Korean and other imports.

As stated above, Customs requested information on the volume and price of Australian sales of galvanised steel pipe during the period 1 July 1996 to 31 March 1999 ('injury analysis period') from major importers of galvanised steel pipe from Korea and Indonesia. The importers did not provide the information requested.

Pacific Pipe repeated its argument that Customs should be able to estimate the landed cost of exports from Korea. However, as noted out above FOB prices give no guide to the respective selling prices in the market.

Customs still does not have sufficient information to draw any conclusion regarding the influence of Korean imports or other imports may have on the market price. Customs is still unable to draw a conclusion on whether those imports may have contributed to the injury suffered by the Australian industry.

Saha exports

As discussed in section 5.3.1.1 of this report, CMC submitted that:

- 'if Customs had not analysed exports from Saha Thai's exports on a quarterly basis, no finding of dumping would have been made'; and
- as exports from Saha were not dumped, Customs erred in cumulating exports from Saha with dumped exports in assessing whether dumped goods from Thailand were causing material injury to the Australian industry.

Pacific Pipe also raised this issue in its submission.

As discussed above, Customs considers that the exports from Saha should not be treated as dumped goods in assessing whether dumped goods were causing material injury to the Australian industry.

Customs acknowledges that imports of the goods from Saha, while not at dumped prices, undercut the prices offered by the Australian industry and may have contributed to the injury suffered by the Australian industry. However, the prices offered rarely undercut the prices offered by First Steel and Pacific Pipe.

5.4.2 Other factors

5.4.2.1 Restrictive trade practices

The Minister is required by s. 269TAE(2A) to consider whether any injury to the Australian industry is being caused or threatened by 'restrictive trade practices of, and competition between, foreign and Australian producers of like goods'.

It was claimed in two of the applications to the TMRO that Customs should have regard to a written submission by DJ Palmer. No mention is made of DJ Palmer in Customs original report.

In submissions to Customs, DJ Palmer alleged that it approached the Australian industry seeking supply of galvanised steel pipe. The Australian industry allegedly refused to supply and consequently DJ Palmer had to seek alternative sources of supply. DJ Palmer also alleged that a concerted effort was made by the Australian industry to erode confidence in its business. It claimed that the Australian industry approached its customers to offer them better prices.

DJ Palmer did not provide any evidence to substantiate its claims. Customs is unaware of any investigation of allegations of anti-competitive behaviour by the relevant authority.

In its submission to the current re-investigation, Pacific Pipe challenged statements by Customs that importers could readily switch supply sources. However, Pacific Pipe did not provide any evidence to substantiate its claims.

In the absence of supporting evidence, Customs is unable to have regard to these claims.

5.4.2.2 Developments in technology

The Minister is required by s. 269TAE(2A) to consider whether any injury to the Australian industry is being caused or threatened by developments in technology.

Interested parties did not raise this issue. In any event, Customs found no evidence that injury to the Australian industry was caused or threatened by developments in technology.

5.4.2.3 Export performance and productivity of the Australian industry

The Minister is required by s. 269TAE(2A) to consider whether any injury to the Australian industry is being caused or threatened by the export performance and productivity of the Australian industry.

CMC raised this issue in its submission to the re-investigation relying on two reports—the *PSA Inquiry into the Welded Steel Pipes Declaration—An Industry*

Specific Report on Tubemakers and Palmer Tube, the two complainants, dated 25 October 1995 and the ACCC Inquiry into the Steel Mill Products Declaration: A Broader Industry Report including Specific Reference to Tubemakers and Palmers, 31 December 1995.

Customs considers that the two reports preceded the injury analysis period by a significant period. While the reports provided 'useful background to industry operations and practices prior to that date' they have little relevance to this re-investigation. Customs found no other evidence that any injury was caused or threatened by the export performance and productivity of the Australian industry.

5.2.4.4 Other issues raised by interested parties

Pacific Pipe and First Steel raised other issues in submissions to this re-investigation (eg the calculation of the non-injurious price, differences in quality of goods and rebates). These submissions go to issues that are not within the scope of this re-investigation.

6 RESPONSES TO STATEMENT OF FINDINGS

6.1 OneSteel

OneSteel made submissions in relation to material injury/causal link; the scope of the review and the methodology employed for assessing the dumping margin.

6.1.1 Material injury/causal link

OneSteel supports Customs proposed recommendation that the original finding that dumped goods from Thailand caused material injury to the Australian industry be affirmed.

6.1.2 Scope of the review

OneSteel does not support the approach taken by Customs in reviewing the issue of what goods were dumped. OneSteel appears to consider that Customs has re-assessed the dumping margins attributable to Saha and the methodology for calculating interim dumping duty and submits that, in doing so, Customs has 'operated outside the scope for this review'.

In conducting this re-investigation, Customs was directed to reconsider the issue of whether dumped goods caused material injury to the Australian industry. Three elements have to be addressed to comply with that direction—are the goods dumped, material injury and the causal link between those dumped goods and material injury.

As noted above, the TMRO clarified that the scope of the TMRO's original recommendation to require Customs 'to re-investigate the findings of causal link and material injury, was only to the extent that it would have been necessary to re-investigate the issue of causation'. Similarly, Customs has looked at the issue of dumped goods to the extent necessary to reconsider the issue of whether *dumped goods* have caused material injury to the Australian industry. Dumping margins were not recalculated.

6.1.3 Methodology employed for assessing the dumping margin

In Report No. 11, Customs found that the weighted average dumping margin for Saha over the investigation period was negative (-4.8%). Unless there are exceptional circumstances, Customs uses the weighted average dumping margin over the investigation period to determine whether or not dumping has occurred: s. 269TACB(2)(a). This is consistent with Article 2.4.2 of the WTO Anti-Dumping Agreement.

Customs stated on page 21 of Report No. 11 that:

In summary, the negative margins in the earlier periods coincided with the severe devaluation of the Baht against the USD. Since that time the Baht has recovered and there has been a trend towards dumping. Given the fluctuations of the Baht over the period examined and its effect on price comparison, Customs is of the view that the quarterly examination of dumping margins is the most appropriate.

On the basis of this quarterly dumping margin analysis, Customs found that exports of the goods by Saha were dumped and recommended in Report No. 11 that measures be imposed on exports by Saha.

Customs decision to use a quarterly dumping margin analysis was based on the short term fluctuation in the USD:Baht exchange rate in December 1997. Section 269TAF and Article 2.4.1 of the WTO Anti-dumping Agreement provide that short term fluctuations in exchange rates should be ignored when making a fair comparison between export price and normal value.

Customs considers that the exports from Saha should not be included in assessing material injury and causation.

While the statement of findings may have given the impression that Customs has retrospectively applied current policy, this is not the case. Unless there are exceptional circumstances, Customs only uses the weighted average dumping margin over the investigation period to determine whether or not dumping has occurred. This is consistent with the WTO Anti-Dumping Agreement. Short term fluctuations in exchange rates may be ignored: s. 269TAF(3) and Article 2.4.1 of the WTO Anti-Dumping Agreement. This 'policy' has applied since the time of the original investigation.

Customs has had regard to the actual circumstances of the case—not 'the circumstances documented in the original investigation'.

6.2 CMC

CMC lodged a submission supporting the proposed recommendation that the Minister substitute a new decision to publish a dumping duty notice in respect of galvanised steel pipe exported to Australia from Thailand other than exports from Saha. CMC has requested that the Ministers decision take effect from the date of the original public notice, namely the 17th February 2000.

CMC submitted that the Customs re-investigation should have been more exhaustive in covering the issues of Korean and other country imports and restrictive trade practices. CMC reserved the right to further pursue those matters if its submission on "timing" was not accepted. CMC concedes that those concerns would have no commercial interest otherwise.

6.3 Pacific Pipe

Pacific Pipe lodged a submission stating that the volume and timing of its exports was such that these goods could not have caused injury to the Australian industry.

Customs' re-investigation has not supported this claim.

7 RECOMMENDATIONS

Customs remains satisfied that:

- the dumped prices of galvanised steel pipe from First Steel and Pacific Pipe undercut the prices offered by the Australian industry;
- the volume of dumped galvanised steel pipe from First Steel and Pacific Pipe was material; and
- both the volume of imports from First Steel and Pacific Pipe and their low (dumped) prices contributed to injury to the Australian industry in the form of a reduction in market share, price depression, price suppression and reduced profits and profitability.

Customs notes that:

- the weighted average dumping margins over the investigation period of both First Steel and Pacific Pipe were significant and positive; and
- the weighted average dumping margin over the investigation period for Saha was negative.

Customs affirms its findings:

- that imports of galvanised steel pipe from Thailand at dumped prices, of themselves, caused and threatened material injury to the Australian industry— noting that Customs now considers that imports from Saha should not be treated as dumped goods in assessing whether dumped goods were causing material injury to the Australian industry;
- that it does not have information on the volume and price of Australian sales of the goods imported from Korea and Indonesia during the period 1 July 1996 to 31 March 1999 to determine whether those imports also caused injury to the Australian industry; and
- that it has not attributed injury caused by other factors to dumped goods exported from Thailand.

Customs does not have sufficient information to determine whether any injury to the Australian industry was caused or threatened by other factors, including:

- ‘restrictive trade practices of, and competition between, foreign and Australian producers of like goods’;
- developments in technology; and
- export performance and productivity of the Australian industry.

Customs considers that the Minister should be satisfied that exports of galvanised steel pipe by First Steel and Pacific Pipe at dumped prices, of themselves, caused or threatened material injury to the Australian industry.

Customs recommends that the Minister:

- revoke the decision to publish dumping duty notices in respect of galvanised steel pipe exported to Australia from Thailand; and
- substitute a new decision to publish a dumping duty notice in respect of galvanised steel pipe exported to Australia from Thailand other than exports from Saha.