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RODDA CASTLE & CO
 CUSTOMS AND INTERNATIONAL TRADE CONSULTANTS

Submission 1.6

OUR REF:

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The Committee Secretary
 House of Representatives Standing Committee on
 Legal and Constitutional Affairs
 Parliament House
 CANBERRA ACT 2600

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Dear Secretary,

Inquiry Into Averment Provisions in Customs Legislation -
Further Submission on Behalf of Peter Tomson -
Prices Paid for the Goods and Misrepresentation by the ACS of the True
Nature of the Case Against Mr Tomson

The submission which I made to this Committee on 24 April 2003 contained a number of annexures, one of which (Annexure 7) was a copy of a statement made by Mr Gregory Grausam of the Australian Customs Service ("ACS"). That statement related to an overseas investigation conducted by Mr Grausam and another customs officer, Mr James Delmenico, in December 1989. The investigation was concerned with the purchasing activities of Mr Tomson in Hong Kong and Thailand throughout the period from 1984 to 1988.

Prices Paid for the Goods

During the hearing on 23 June 2003, I was asked to prepare a list of references to those parts of the statement which refer to questions asked by the ACS officers about the genuineness of the prices shown in the export documents prepared overseas for Mr Tomson.

1. The Hong Kong Transactions

Mr Tomson's Hong Kong purchases are dealt with in pages 1 to 12 of the statement, and the issues relating to prices as opposed to official FOB values are set out at pages 9 to 12. The exchanges in relation to price and value commence near the foot of page 10 (and please note the summary of the procedures required under Hong Kong law in section C.2.5.1 of my statement)

Delmenico: Do you consider the document, the values shown in these documents to be reasonable for the goods?

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Lin (interviewee): Yes

Delmenico: For the goods that are shown, do you consider the values to be reasonable or do you think they're too low or not high enough. What is your opinion of the values?

Grausam: Are you talking about the export declarations or these ones to us (show invoices) or these ones to us, they're the copies of the ones sent to us or are you referring to the export declaration values there?

Delmenico: Well anyone it doesn't matter, there are unit values shown here and there are unit values shown here on this document.

Mr Lin then provides an explanation (commencing near top of page 11) of how he adjusts the value to be shown in the export declaration to the official minimum FOB level if the purchase price paid by Mr Tomson was lower than the official minimum FOB value. He gives the example of a purchase in which Mr Tomson paid HK\$30 for an article for which the official minimum FOB value is HK\$40 -

Lin: I have the experience, but this, not always easy, sometimes, sometimes, for example, Mr Paul buy merchandise, for example, ah, for example you are shop "A" okay, Mr Paul buy merchandise from shop "A" as I know this merchandise is forty, forty.

Delmenico: Faulty

Lin: For example forty dollars alright?

Grausam: Forty dollars?

Lin: Forty dollars per piece okay

Delmenico: Yes

Lin: I know if Mr Paul he later tell me, he give the unit price for everything, maybe, he give me thirty, but if I know forty, I must mention the export licence to be forty and then I must submit the export declaration to be forty but my invoice mention thirty.

Grausam: Right so if you knew that they

Lin: Yeah, yeah, because this is very important, Hong Kong's duty is very cheap.

A further discussion of the Hong Kong procedures follows at page 12 (near top of page) -

Delmenico: Did you ever believe that the values given to you by Vilaysack in relation to garments purchased by him were low?

Lin: When I thought the values were low I used to adjust them on the export declaration presented to Hong Kong Customs because that is the law. I used to leave the values given to me by Paul on the other documents.

2. The Thai Transactions

The procedures followed in Thailand are set out in pages 14 to 84 of Annexure 7. Three sections of the statement relate to the activities of registered export companies and one section explains the role of the forwarding company, Trans Air Cargo.

(a) New Calcutta Store (1969) Ltd Partnership

The role of New Calcutta Store (1969) Ltd Partnership ("New Calcutta") is the first examined (at pages 14 to 28). This company is a registered export company, and was used by Mr Tomson as export agent for some of his purchases in Thailand.

The ACS officers did not ask any questions about the purchase prices of the goods invoiced by New Calcutta. However, they did ask questions (pp 16-17) relating to an invoice prepared on New Calcutta letterhead. The following extract is on page 16 -

Hussain: Yes I met him once this man

Grausam: These goods here, are they your goods that he's exported or were they goods that he has purchased himself?

Hussain: These goods actually they were the stock lot, cheap quality

Grausam: Right

Hussain: A clearance sale something like that

Grausam: Did you sell him the goods or did he buy the goods himself do you know that?

Hussain: He bought the goods himself

The following appears at the foot of page 17 and the top of page 18 -

Delmenico: Now do you have the, do you have any details of the values that you sold to Thongson Imports

Hussain: He purchased the goods from outside, the stock lot

Delmenico: From outside

Hussain: From outside

Delmenico: Not from your

Hussain: Not from my company

Delmenico: I see

Hussain: From outside, means any, any in the stall

Grausam: Yes

Hussain: and the market.

The following exchange is recorded on pages 22 and 23 -

Delmenico: Could you have a look at the values on that invoice and in your expert opinion in Thailand give us a comment as to what you think the values are, do you think within reason or are they too low. Would you sell to me some garments for that value

The transcript then states "*Hussain looks at invoice for Thongson Imports & Exports*"

Hussain: This is ridiculous [The transcript does not state what it was that Mr Hussain was referring to when he makes this comment]

Delmenico: If I just walked in and asked you to supply some garments in that quality would you supply the same things to me for that value?

Hussain: Sir, it depends if they were really

Delmenico: Bad quality

Hussain: Bad stock or just throwaways, something like that it would be possible. I still have quite a lot, maybe sacrifice or giveaway for nothing.

It is important to note also in this interview that Mr Hussain of New Calcutta explained to the ACS officers the role of export companies. (These are the companies referred to by Mr Grausam in an internal report as "false suppliers"). Please see the exchange on pages 14 and 15, and the further explanation on pages 18 and 19 regarding preparation of export documents.

(b) Steady Export Co Ltd

The second export company examined was Steady Export Co Ltd ("Steady"). The record of interview with Mr Damrong is at pages 29 to 32. The following is recorded at page 31 -

Delmenico: In your expert opinion do you consider the prices shown on the documents to be reasonable?

Damrong: The prices are very cheap but it is difficult to tell, it depends on the material.

Mr Damrong also provides a detailed description at pages 29 and 30 of the role of Trans Air Cargo in the preparation of export documents.

(c) Thai Facilities of Wearing Co Ltd

The next export agent interviewed was Thai Facilities of Wearing Co Ltd ("Thai Facilities"). Pages 33 to 41 record the interview with Mr Chukiat. Mr Pipat, a Thai Customs officer, acts as interpreter. Only one question was asked in relation to the prices paid by Mr Tomson for the goods exported through this company. Page 36 records -

Grausam: Okay, I would ask you, if you can, to look at the prices for these various goods described in the invoice, in your opinion do they appear to be a fair price

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Pipat: He said they are a fair price.

Further, at page 38, the following is noted -

Pipat: The price of the goods you know there's no standard for that some of the goods that the buyers buy could be you know some that are out of date you know some, old ones, some dirty ones.

Mr Chukiat explains on pages 33 to 36 the role of Trans Air Cargo in the preparation of export documentation, explaining at the same time the role of his company in the recording of details of purchase prices. Pages 33 and 34 record the following -

Grausam: Who made out the documents

Pipat: Trans Air Cargo made up all the documents for him

Grausam: Right so could you confirm that Mr Chukiat would not know any details that are on these documents

Pipat: Yes, he prepared the document, I mean, he gave the document to Trans Air cargo, he prepared the details

Grausam: Who?

Pipat: The price

Grausam: Mr Chukiat prepared the details?

Pipat: Yes he does

Grausam: For Trans Air Cargo to type onto the documents?

Pipat: Right, right

Grausam: Right, who tells Mr Chukiat what to put on the documents?

Pipat: He prepared the details from the buyer's receipt

Grausam: Right

Pipat: The buyer [meaning Mr Tomson] give him receipts.

Mr Grausam's understanding of the accuracy of this arrangement is confirmed at page 39 -

Grausam: Good, now, I'd just like to confirm that yesterday Mr Chukiat said that Mr Paul was the person he saw for Landwren, now he told me and I just want to confirm that this is the case that Mr Paul came to him with receipts from shops and from those receipts Mr Chukiat made, wrote out a document or an advice to Trans Air Cargo and they typed up the details per what Mr Chukiat had advised them, do you understand that?

Pipat: Yeah

Pipat: Greg he said yes.

The following further explanation of the role of Trans Air Cargo is provided at pages 35 and 36 -

Grausam: Does he know anything about the company Landwren Pty Ltd

Pipat: The manager of the company Landwren comes to him, you know, from time to time, used to come to him and then you know buy his products and then ask Thai Facilities of Wearing to ship the goods for him

Grausam: Right, can you ask him who typed up the details for these documents, the shipments to Landwren

Pipat: Trans Air Cargo

Grausam: So, if Trans Air cargo typed up the details on these documents would they have been the ones who saw the receipts from the person from Landwren?

Pipat: Well he said, he wrote it down, the amount of the goods and the price and send the paper to Trans Air cargo and Trans Air Cargo typed them up.

Central to my allegations regarding perjury, the swearing of false averments and conspiracy to pervert the course of justice is the following exchange recorded at pages 40 and 41. It details the advice given to the ACS officers by Mr Chukiat in relation to the recording of transactions in export documents in both US dollars and baht -

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Grausam: *Now these total prices here on these documents they would be the total prices that add up on the receipts that Mr Chukiat saw could you confirm that, these total prices here, the prices here and the total price, the unit prices and then the total price, would be, Mr Chukiat would get that from the receipt*

Pipat: *Yes*

Grausam: *That is right, okay, now on this here, right, it's US dollars now my understanding is that people can't, even though it's invoiced US dollars, they can't hang on to the US dollars, they have to buy Baht, they have to sell the currency to a foreign bank, could you ask him why the prices are in US dollars?*

Pipat: *He said that US dollars kind of standard value, so he just want to hang on to that value because the people come to this country, you know, they change their money into US dollar*

Grausam: *Yes, but, where did he get this US dollar value from, if people are buying in Baht, right, where did he get these US dollars from*

Pipat: *He just change it, you know, change from Baht to US dollar*

Grausam: *Right, okay, there is a value on the Thai Customs Export Declaration in Baht for both sets of documents, is that Baht amount there the actual total from the invoices that he saw*

Pipat: *How's that again*

Grausam: *These amounts here, you've got US dollars that tie up to the invoice okay*

Pipat: *Yeah*

Grausam: *They've been converted to a Baht amount or a Baht amount has been converted to the US dollars*

Pipat: *Right*

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Grausam: *Can you confirm that that Baht amount there the total Baht amount there and there are the actual totals that he saw from the receipts*

Pipat: *Yes (my emphasis)*

Despite this clear explanation of the reason for the value of the goods having been shown in the export documentation in both US dollars and baht, the ACS decided, when the Tomson matters came to trial, to deliberately misrepresent the invoice containing US dollar values as a second payment for the goods. Key averments were sworn to reflect the same deliberate misrepresentation of the truth.

(d) Trans Air Cargo

The details of this interview are recorded at pages 42 to 84 of Mr Grausam's statement. The Managing Director (Mr Keree) and Operations Manager (Mr Suchart) were interviewed.

The interview is concerned primarily with the role of Trans Air Cargo in the transactions rather than the prices paid for the goods exported on Mr Tomson's behalf. There are some oblique references to actual purchase prices however. The following passage at pages 44 and 45 explains what is done for "walk-in exporters". It also explains from where the information relating to prices is obtained, and the response of the Thai Customs to the declaration of prices it considers to be too low -

Keree: *You know, two, three shop, we pick it up for them okay we have to find some exporter to issue the paper for them, we packing for them, make document for them, they show us the receipt from the shop, you know in the market and then we type according to that shop what the item called, what the percentage of the material, what the price they showing there, and then we type all this document and then we are do export for them by that company, not in our company*

Delmenico: *Do you keep those receipts that you*

Keree: *We have that kind of receipt plenty*

Delmenico: *Yes*

Keree: *But not official receipt*

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- Delmenico:* No, but it's a receipt that exporter
- Keree:* Not exporter the shop
- Delmenico:* The shop?
- Keree:* The shop give it to us
- Delmenico:* To the
- Keree:* To the buyer
- Delmenico:* To the buyer?
- Keree:* Yes
- Delmenico:* And then they gave it to you?
- Keree:* They give to us yes
- Grausam:* That is important to us and I would just like to go over that point with you, when, just as a matter of procedure for Trans Air Cargo generally, when a importer comes in to see Trans Air Cargo they say we have goods
- Keree:* No, that should be exporter not importer, oh importer to Australia?
- Grausam:* Yes
- Keree:* But exporter from Thailand
- Grausam:* Right, yes, that is right, now when these people who want to export goods from Thailand come to see Trans Air Cargo they ask you to arrange the documentation, the details on the documents that you make out are they supplied by the exporter from Thailand the person who actually purchased the goods from the shops?
- Keree:* Yes
- Grausam:* Right, it's just important that we understand that for our purposes because what has happened we have noticed there are differences on some of the documents that we

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receive and the Thai Customs has been able to provide to us and we would wonder why there is a difference

Keree: Let me explain you, this the document, exporter buy from the market, but these documents they are issued from the shop, is a small small shop, not a big shop

Grausam: Yes, we've seen

Keree: Just by the street shopping

Delmenico: Yeah

*Keree: They give the receipt that these people come to buy from them and they write the detail of the thing in that receipt at the place and then the exporter bring that receipt to us, okay we go pick up from that shop, you know without, with this receipt, we the document, we **make the document with this receipt and then when we take the shipment to the airport the Customs will see again that the price is reasonable or not, if it not reasonable they will tell us to go back or they maybe get file to us in the airport they have the department checking, Customs checking pricing if the price is too low they will tell us that you may be, you are, your exporter may be cheating the exchange control, because somebody maybe sell this money to the black market to get the higher rate but the exporter must when they bring the money in they must change to the bank to get the exchange control (my emphasis).***

Mr Keree provides additional information at pages 53 and 54 in relation to the procedures that follow the production of the shop receipts provided by "walk-in exporters". Please refer to this passage on pages 53 and 54 -

Keree: Oh, one thing you want me to show you the paper about we get from the shop that show how much that thing?

Delmenico: Yes, the receipt, yes, please

Keree: This thing? (The transcript records "Mr Keree produced a copy of a receipt from a shop)."

Grausam: So when the client comes in with their receipts you make a photocopy of the receipt

- Keree: The receipt yes*
- Grausam: But the client still keeps the original receipt, so*
- Keree: Some they keep some they give us this paper*
- Grausam: Yeah*
- Keree: Yeah, of the shop, they, they have to buy, this is because walk in customer*
- Grausam: Yeah*
- Delmenico: Do you always request a receipt?*
- Keree: Oh yes, we must*
- Grausam: If a walk in customer*
- Keree: Because if otherwise no receipt we don't know what, what kind of goods, we not familiar with the article, blouse, dress, what they call the thing they like it here*
- Grausam: Yes*
- Delmenico: But what if the walk in customer just gives you a list of goods that he has bought with the prices beside them and tell you, tells you where to go and pick them up, would you accept that, would you accept that?*
- Keree: No, mostly have to give me this kind of receipt*
- Delmenico: Yeah, but if they don't have a receipt, if they pay cash for the goods to the shop and the shop didn't give them he would tell you*
- Keree: They have but very rare, they have this kind, if they didn't have this paper*
- Delmenico: Yes*
- Keree: They will write it down normally*
- Grausam: But normally*

Keree: But very rare, normally they keep this kind of receipt

Grausam: Normally if someone's paid money they want to make sure that they've got a receipt for them to prove that they've paid

Keree: Yes, yeah, they have to get this one

Grausam: If there's any problems they can go back to the shop and say look here I've paid for this quantity

Keree: Yes, right

There are further passages at pages 69 and 75 relating to production of receipts and the fact that the prices shown in the invoice and export documents are taken from the receipts -

Grausam: Right, right, now we've already established who provided the details, for these documents that are made out by Trans Air Cargo, you told us yesterday that they are made out, you ask, the exporter comes in here with their copies of the receipts

Keree: Uh, huh

Grausam: Trans Air Cargo sees the receipts, your employees see the receipts and then they make out the shipping documents, now that, is that is generally correct for the exporter, for Trans Air Cargo, New Calcutta Store documents that are made out, is that right?

Keree: Yes (page 69)

...

Grausam: Is it possible for you to ask Mr Suchart, as well when he or his staff prepare those invoices, they would also have to see the receipts, what I'm trying to do mainly is establish the correctness of the documents, so is it possible for you to confirm with him that he and his staff would see the receipts from the exporters before they would prepare the documents

Keree: Oh yes

Grausam: That is the case

Keree: That is when he have to see

Grausam: I just want to make sure that there's no

Keree: You see according to the receipt from the factory or from people

Grausam: Right

Keree: And then he just type according to that record?

Grausam: I just wanted to confirm that (page 75)

There are numerous examples of malice toward Mr Tomson and a complete lack of objectivity on the part of the ACS officers in the conduct of this interview. Some of the more obvious examples appear at pages 48 (last paragraph), most of page 50, third last paragraph on page 55, and the last paragraph on page 56.

Misrepresentation by the Australian Customs Service of the True Nature of the Case Against Mr Tomson

The ACS has consistently sought to misrepresent the true nature of what it has alleged against Mr Tomson. The accuracy of my assertions in relation to this issue are illustrated in three separate contexts -

- (1) the opening address of the prosecution in Mr Tomson's trial on 26 July 1993, and the evidence of Mr Prelea for the prosecution,
- (2) the answers given by the Minister (written by the ACS) in response to Questions on Notice asked by the now Leader of the Opposition, Mr Latham, in relation to the Tomson case, and
- (3) ACS submission number 4.1 to this Inquiry.

1. The Trial of Peter Tomson

The charges of -

- (i) smuggling,
- (ii) evasion of duty,

- (iii) making an entry false in a particular, and
- (iv) producing to an officer a statement untrue in a particular

all required the ACS to prove that the amount of money shown in the import documents as the amount paid for the goods by Mr Tomson was less than the amount that he actually paid. No such proof has been produced for the simple reason that none exists. The sum shown as the price paid or payable on all of the documents produced to the ACS in respect of goods imported into Australia by Mr Tomson was the amount he actually paid.

In what appears to be an effort to overcome what the ACS itself realised was a complete lack of evidence of wrongdoing on Mr Tomson's part, the ACS apparently decided that the most expedient way to bring charges against him was simply to allege that the customs values shown in the various entries lodged for his goods were false. Such allegations would rest on the false and completely misconceived belief that owners of imported goods are required to declare, as the customs value of goods, the amount which the ACS itself considers to be the appropriate value. It would follow therefore, on this simplistic approach, that if an owner did not declare as the customs value the amount which was acceptable to the ACS, then the importer was committing an offence against the Act. This misconceived view of the law was supported by the entirely erroneous assumption, apparently prevailing in the Investigation Branch of the ACS in Sydney in the late 1980s and early 1990s, that it was an offence for a person to purchase goods for a price lower than the notional cost of production.

The value of goods for customs purposes was, at the relevant time, governed by the extant provisions of Division 2 of Part VIII of the *Customs Act* 1901. These provisions are reproduced in Annexure 5 of my statement of 24 April 2003 to this Committee.

The key provisions may be summarised briefly, as follows -

Section 156 - Value of Imported Goods

Subject to any contrary intention that may appear from the provisions of the *Customs Tariff Act* 1982 or of this Act with respect to a particular case, the value of any imported goods for the purposes of the *Customs Tariff Act* 1982 shall be the customs value of the goods as determined in accordance with this Division.

Section 157 - Customs Value of Goods

- (1) Subject to sub-section (2), the customs value of goods to be valued is the transaction value of the goods.
- (2) [not relevant for present purposes]

Section 159 - Transaction Value of Goods

- (1) A Collector shall determine the transaction value of goods in accordance with this section.
- (2) The transaction value of goods is an amount equal to the amount of the price, as determined by the Collector, in accordance with the relevant transaction, being that price as adjusted to the extent required by sub-section (3).
- (3) [not relevant for present purposes]

The word "price" as used in subsection (2) is defined for the purposes of that sub-section in section 154, as follows -

"price", in relation to goods the subject of a contract of sale, means the aggregate of:

- (a) all payments made, or to be made, directly or indirectly, in relation to the goods by, or on behalf of, the purchaser:
 - (i) to the vendor;
 - (ii) to an associate of the vendor for the direct or indirect benefit of the vendor; or
 - (iii) otherwise for the direct or indirect benefit of the vendor;

in accordance with the contract of sale or with any other contract relating to the purchase of the goods; and

- (b) all payments made, or to be made, directly or indirectly, by or on behalf of, the purchaser;
 - (i) to the vendor;

- (ii) to an associate of the vendor for the direct or indirect benefit of the vendor; or
- (iii) otherwise for the direct or indirect benefit of the vendor;

under any other contract, agreement or arrangement, whether formal or informal, for the doing of anything to increase the value of the goods;

whether the payment is made in money or by letter of credit, negotiable instrument or otherwise, ...

The obligation which the Act imposes on the owner (importer) of goods is the obligation to produce on demand to the ACS all such information and documentation as is envisaged by the definition of price to enable the Collector to perform the statutory duty imposed by sub-section 159 (1), and to verify the particulars shown in the entry for the goods.

To illustrate the manner in which the ACS sought to misrepresent the nature of the case against Mr Tomson at his trial, I attach pages 2, 3 and 4 of the transcript of the evidence dated 26 July 1993. Marks in the right-hand margin indicate the use of expressions which assert that the customs value of the goods was something other than the price paid by Mr Tomson. For example, on page 2, the prosecutor states -

"The prosecution case is that the **true value** was not less than ..." (my emphasis).

The "true value" to which this remark refers is apparently some other value determined by the ACS but never conveyed to Mr Tomson at any time prior to his trial.

See also this meaningless but misleading passage on page 3 -

"In each case the **price value** disclosed on those invoices which were produced to Australian Customs were said to be done on an FOB basis ... and in each case it is the prosecution's case that the figures disclosed were false, they were substantially less than the **true value** ..." (my emphasis).

The expression "price value" is not used in the Customs Act. It is actually meaningless for present purpose, but the fact that it was used at all in a court of law to outline the legal basis of a case against an accused person is reprehensible. I have no doubt that the prosecution's case was expressed in this

manner in a deliberate attempt to mislead the court into believing that "price" and "value" mean the same thing for customs purposes. If that were the case of course, then evidence of cost of manufacture might be a relevant consideration in determining the value of goods for customs purposes, because determining the cost of manufacture is one way in which the "value" of something can be objectively assessed. It is not however a method authorised by the Customs Act for determining the transaction value of imported goods.

Finally, page 4 discloses two further illustrations of the manner in which the ACS attempted to deceive the court as to the true nature of what was alleged against Mr Tomson. It was stated by the prosecutor that export licences and export declarations obtained in Hong Kong disclose higher values for the goods than those shown on the invoices presented to the ACS. This is incorrect. The Hong Kong documents disclose some official FOB values higher and some lower than the prices shown on the invoices for the goods. The reasons for this were explained to Messrs Grausam and Delmenico by Mr Lin in the conversation referred to on pages 2 and 3 above. The prosecution did not draw this fact to the attention of the court. The amounts shown in the invoices presented to the ACS were the prices actually paid, not Hong Kong official minimum FOB values.

This information was falsely presented in the averments. For example, see the summons relating to the smuggling charge in respect of the Cameron Trading Co transaction. Averment number 12 states -

"the defendant engaged Cameron Trading Co to produce an export declaration Form 2A to the Hong Kong Customs and Excise Department on behalf of Lanwren Pty Ltd for the said goods which stated that the price paid for the goods was HK\$126,620.

The documents in question did **not** state that the price paid for the goods imported by Lanwren Pty Ltd was HK\$126,620.

As examination of the Hong Kong documents themselves plainly reveals, some of the items shown in the export declaration forms have FOB values declared which are higher than the prices shown on the invoice, and some of the items have FOB values declared which are lower than the invoiced prices. (In the case of Cameron Trading too, it should be noted that some of the goods described in the export declarations were in fact not purchased at all by Lanwren Pty Ltd and were not shipped to Australia - another fact not drawn to the attention of the court by the ACS.

Please note that all of the issues relating to the Cameron Trading Co transaction are summarised in detail at Annexure 54 to my submission dated 24 July 2003.

Also on page 4 of the transcript is reference to the fact that "valuation evidence" would be called, meaning evidence relating to cost of manufacture of the goods. Such evidence was of course irrelevant to the issue of whether the sums shown on the entries as the price paid for the goods were false. I believe the true purpose of this evidence was to advance the false and utterly misconceived proposition that goods cannot lawfully be sold in export transactions at prices lower than their cost of manufacture.

The "valuation evidence" referred to was the evidence of Mr Prelea, a person experienced in the purchasing of apparel in South-East Asia. A substantial proportion of his evidence-in-chief was directed to the issue of cost of manufacture of each item seized. If it was not the intention of the ACS to establish a nexus between cost of manufacture and "legitimate" selling price, why was it necessary to call Mr Prelea as a witness at all?

Mr Prelea gave evidence in cross-examination that he was familiar with production overruns and the principles of marginal costing on which many dumping transactions are based. Whether this vitally important issue was explored with Mr Prelea by the ACS before it was decided to call him as a witness is not known.

2. Answers to Questions on Notice

On 6 August 2001, Mr Latham (now Leader of the Opposition) asked (inter alia) the following in QON 2586 -

- (1) Did the Australian Customs Service (ACS) conduct an unsuccessful court case against Peter Tomson, an apparel and footwear importer, in the 1990s; if so, what are the details
- (2) Was the Tomson case similar to the Midford Paramount affair which occurred during the same period.

The following responses to these questions were given by the Minister -

- (1) Yes. In July 1993 a defended Australian Customs Service (Customs) prosecution was commenced against Mr Tomson with respect to **alleged undervaluation** of five shipments of imported clothing ...
- (2) No, this case involved charges under the Customs Act 1901 for **undervaluation**, while Midford Paramount involved charges under the Crimes Act 1914 for fraud ... "

There is no offence called "undervaluation" referred to in the Customs Act, a fact that ought to have been known to the person or persons who drafted the

reply for the Minister. The fact that the ACS chose to characterise the charges against Mr Tomson in this manner however, instead of stating that the charges related to smuggling, evasion of duty, etc, indicates that the ACS is even prepared to deceive its own Minister into believing that it is an offence in some way for an importer to genuinely purchase goods for a price lower than the notional cost of manufacture.

3. Submission 4.1 to This Inquiry

The ACS made some observations in this submission relating to my allegations on behalf of Mr Tomson. On page 11, the ACS correctly states that he was charged with smuggling, evasion of duty, etc and that the charges were dismissed because "the prosecution had not proven the offences beyond reasonable doubt". In relation to this aspect of the matter, the ACS then claims

"The most significant finding in this regard was that the witness relied on by Customs to give evidence regarding the value of the goods operated in a different segment of the market to the defendants and that the evidence of the valuation witness relied on by the defendants was to be preferred."

I make two observations in response. Firstly, the evidence given by the witness relied on by Customs (Mr Prelea) related to the cost of manufacturing the various items seized from Mr Tomson. The purpose of this evidence appears to have been an attempt to persuade the court that, because the cost of manufacturing the various items was higher than the prices declared by Mr Tomson, the declared prices must be false. (There could be no other purpose for this evidence).

Secondly, the evidence given by the witness called by Mr Tomson (Mrs Chonwanarat) was not evidence about "valuation" at all. Her evidence related to the prices at which the various items imported from Thailand could be purchased in that country at the time Mr Tomson made his purchases. Her evidence confirmed that the prices shown in the invoices presented to the ACS were genuine, and did no more than corroborate the information given to Messrs Grausam and Delmenico by the various persons they interviewed in Bangkok in December 1989.

Her evidence also explained the purpose of the various documents brought into existence in Thailand, including (for each shipment from Thailand) the invoice showing a US dollar value for the goods that was claimed in the prosecutor's opening address to be proof of a second payment for the goods.

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A further submission responding to the issues raised in the written and oral submissions presented by the ACS at the 24 July 2003 hearing will follow within the next week or as soon as time permits.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Ian Rodda', written over a horizontal line.

(Ian Rodda)

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to tender and they contain summary documents which may assist your Worship. We did propose in fact to tender the folders if need be and have put to strict proof, there will be a large number of witnesses called in relation to the documents. If not put to strict proof the documents can be received by your Worship in the book fashion. But perhaps for present purposes if I could merely extract from the folders what is a summary document and hand these up your Worship.

These are perhaps for the assistance of my friend, the documents called Brief Ed Case 1 to 5, which are at the front of each section and are merely a summary document. I am only handing them up to your Worship at this stage so that some of the names which will be mentioned in the hearing can be familiar with your Worship in effect as part of the opening. So if I can hand those up to your Worship.

BENCH: Yes, have you seen those Mr Parnell.

PARNELL: I have just been handed them a few moments ago your Worship. I haven't had time to consider them, but i have no objection to your Worship seeing them at this stage. I will be making a couple of applications when Mr Johnson finishes your Worship.

JOHNSON: The document headed case 1, sorry your Worship cases 1 to 4 are Tomson and case 5 is Keomalavon. Case 1, 16 July 1987 is the date of the alleged offence. The import of Thong Son to the imports and exports was the business name of Mr Tomson, Supplier Steady Export Company is the company in Thailand which prepared documents including an invoice which were produced to Australian Customs.

The Company of origin Thailand, the entry number is the entry for home consumption number which was produced to Australian Customs. The figures on the right hand side represent the prosecution case as alleged the cleared value in Australian dollars was two, four six two eighty-three. The prosecution case is that the true value was not less than four seven three nought forty-five, with a cleared duty at one four five nought fifty-eight. The prosecution case the true duty not less than four nought five seven fifty-four and the underpaid duty is disclosed, that is the prosecution's allegation. ||

Case 2, date 29 July 1987 is the date of the alleged offence, the importation when the relevant documents were produced to Customs. Again Thong Son Imports and Exports was shown as the importer. The supplier Gold Vincent and Company this time from Hong Kong, the entry for home consumption number I've got at the bottom and again figures which represent declared value, what is said to be true value a figure of not less than that, declared duty, true duty and the prosecution case as to what is the alleged underpaid duty. ||

Case 3, 7 August 1987 is the alleged shipment and the date of the alleged offence when documents were produced in customs.

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Thong Son Imports again the importer. Supplier Wine Lux Enterprise Company this time from Taiwan and the entry number at the bottom 1152K. In relation to declared true values one nine five six and other figures as your Worship sees across the page. The true value the prosecution alleging being not less than seven nine four one seventy-two.

Case 4 against Mr Tomson, date of the alleged offence 24 September 1987. Importer Thong Son Imports and Exports. The supplier New Cole Cutter Store Limited. Country of origin Thailand. The entry number as disclosed. The declared value and the true value. In this case the prosecution alleges that the true value was not less than eight four, five two forty-three.

Case 5, the case against Mr Keomalavon. The date of the alleged offence 28 March 1988. The importer Lan Ren of which Mr Keomalavon is a director. The supplier Cameron Trading Company. The country of origin Hong Kong. The entry number as shown at the bottom. The declared value seventeen nine sixty one, sixty-five. These are all in Australian dollars these dollar figures your Worship. The true value alleged to be twenty one thousand eight hundred and fifty three sixty-four and the duty figures as alleged appearing across the page.

The prosecution case in each matter could be put broadly in this way your Worship. Mr Tomson in relation to the four shipments that relate to him and Mr Keomalavon relating to the one shipment that is the subject of his charge, travelled overseas and purchased items of clothing, women and childrens and mens clothing mainly men and womens clothing in Thailand, Hong Kong or Taiwan, predominately Hong Kong and Thailand.

The items were paid for in those countries. Thereafter documents were prepared which included invoices which were produced to Australian Customs in due course. In each case the price value disclosed on those invoices which were produced to Australian Customs were said to be done on an FOB basis, on a Free On Board basis and in each case it is the prosecution's case that the figures disclosed were false, they were substantially less than the true value of the goods.

The prosecution case is that in the case of Mr Tomson and his four shipments and the case of Mr Keomalavon and his one shipment that the documents were effectively prepared by the overseas suppliers the figures being inserted which were false figures, but this was done to the knowledge of Mr Tomson and Mr Keomalavon and that as a result in each case there has been each of the offences alleged committed.

The evidence in support of the prosecution case generally speaking falls within a number of categories. There are firstly the documents produced to the Australian Customs. Documents which included and entry for home consumption prepared by a customs agent on the instructions of on the one

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hand Mr Tomson and on the other hand Mr Keomalavon, and those entries for home consumption were accompanied by the offending invoices with the allegedly false figures disclosed. And there will be evidence from the customs agents who acted for both Mr Tomson and Mr Keomalavon that in each case it was Mr Tomson and Mr Keomalavon who provided instructions to them in relation to the preparation of documents for the purpose of importation into Australia.

The second category of evidence is documents which were obtained in Hong Kong and Thailand by customs officers who were authorised persons for the purposes of the New South Wales Evidence Act. I will take your Worship in due course to the relevant positions, but the New South Wales Attorney General appointed two customs officers as authorised persons and that has the effect that where documents are obtained by them overseas and those documents the prosecution will submit may be admitted as business records under the Evidence Act and that certain evidence as to what those officers were told may be admitted on an information and belief basis.

It is the prosecution case in relation to this second category of evidence that these documents which include export licences in Hong Kong, export declarations disclose higher values for the goods than those disclosed on the invoices produced to the Australian Customs. It will be the prosecution's case that whatever the motivation may be for suppliers overseas to assist importers such as Mr Tomson and Mr Keomalavon by providing to them invoices with falsely low figures, that there are requirements for correct information to be included in overseas documents lodged with their authorities for the purpose of export declarations and licences and the like and there is material in those documents which supports the prosecution case that the figures disclosed in the invoices produced to Australian Customs were false.

The next category of evidence is the third category, is valuation evidence. In relation to each of the five shipments the items of clothing in question were taken into the custody of Customs and they have remained in the custody of Customs since. It is therefore possible to examine the garments which are the subject of the invoices. Compare them with the FOB figures shown on the false invoices, allegedly false invoices produced to Customs and determine whether those figures are true or not.

Expert evidence will be led from a witness with very substantial experience in the clothing industry in Australia and very substantial experience of purchasing goods in the three countries in question. That in each case the FOB value attributed to these clothing items on the false invoices are clearly far too low, even allowing for a conservative FOB valuation.

When one looks at the garments one looks at the materials of which they are made, the degree of workmanship that the values