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Australian Customs and
Border Protection Service

PUBLIC
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CUSTOMS ACT 1901 - PART XVB

TRADE MEASURES CONSIDERATION REPORT 150

**CONSIDERATION OF AN APPLICATION FOR A DUMPING
DUTY NOTICE**

SILICONE EMULSION CONCRETE ADMIXTURES

UNITED STATES OF AMERICA

11 AUGUST 2009

CONTENTS

CONTENTS	1
ABBREVIATIONS	3
1 INTRODUCTION	4
1.1 APPLICATION	4
1.2 COMPANY INFORMATION	4
1.3 PREVIOUS SECA CASES	4
1.4 CONSIDERATION OF THE APPLICATION	4
2 DOES THE APPLICATION COMPLY WITH SUBSECTION 269TB(4)?	5
2.1 APPROVED FORM	5
2.2 SUPPORTED BY AUSTRALIAN INDUSTRY	5
2.3 CONCLUSION – COMPLIANCE WITH SUBSECTION 269TB(4)	5
3 IS THERE AN AUSTRALIAN INDUSTRY IN RESPECT OF LIKE GOODS?	6
3.1 THE GOODS THE SUBJECT OF THE APPLICATION	6
3.1.1 Description	6
3.1.2 Product information	6
3.1.3 Tariff classification	6
3.2 LOCALLY PRODUCED LIKE GOODS	7
3.3 MANUFACTURED IN AUSTRALIA	8
3.3.1 Manufacturing/production process	8
3.3.2 Substantial manufacture	8
3.4 AUSTRALIAN MARKET	8
3.4.1 Market demand	8
3.4.2 Market supply	9
3.5 AUSTRALIAN INDUSTRY INFORMATION	10
3.5.1 Australian industry's sales	10
3.5.2 General accounting/administration information	10
3.5.3 Cost information	11
3.6 CONCLUSION – AUSTRALIAN INDUSTRY	11
4 REASONABLE GROUNDS FOR THE PUBLICATION OF A DUMPING DUTY NOTICE – ECONOMIC CONDITION OF THE INDUSTRY	12
4.1 THE APPLICANT'S CLAIMS	12
4.2 COMMENCEMENT OF MATERIAL INJURY	13
4.3 APPROACH TO INJURY ANALYSIS	13
4.4 VOLUME EFFECTS	13
4.4.1 Lost sales volume	13
4.4.2 Lost market share	14
4.5 PRICE EFFECTS	15
4.5.1 Price undercutting	15
4.5.2 Price depression	15
4.5.3 Price suppression	15
4.6 PROFIT EFFECTS	16
4.7 OTHER ECONOMIC FACTORS	17
4.8 CONCLUSION – ECONOMIC CONDITION OF THE INDUSTRY	17
5 REASONABLE GROUNDS FOR THE PUBLICATION OF A DUMPING DUTY NOTICE – DUMPING	19
5.1 GENERAL	19
5.1.1 Exporter/Importer	19
5.1.2 Analysis period	19
5.1.3 Import volumes	19
5.2 EXPORT PRICE	20
5.3 NORMAL VALUE	20
5.3.1 Selling price in the exporter's domestic market	20

5.3.2	<i>Selling price in the exporter's domestic market using another method</i>	20
5.4	ADJUSTMENTS	21
5.5	DUMPING MARGIN	21
5.6	CONCLUSION	21
6	REASONABLE GROUNDS FOR THE PUBLICATION OF A DUMPING DUTY NOTICE - CAUSAL LINK	23
6.1	CAUSAL LINK	23
6.1.1	<i>The Applicant's claims</i>	23
6.1.2	<i>Assessment</i>	23
6.2	FACTORS OTHER THAN DUMPING AFFECTING ECONOMIC PERFORMANCE	25
6.2.1	<i>Export sales</i>	25
6.2.2	<i>Increased cost of product</i>	25
6.3	CONCLUSION	25
7	SUPPLEMENTARY ITEMS	26
7.1	SUBSIDY	26
7.2	THREAT OF MATERIAL INJURY	26
7.3	CLOSE PROCESSED AGRICULTURAL GOODS	26
7.4	EXPORTS FROM A NON-MARKET ECONOMY	26
7.5	EXPORTS FROM AN 'ECONOMY IN TRANSITION'	26
7.6	AGGREGATION OF VOLUMES OF DUMPED GOODS	26
8	COMPARISON OF EXPORT PRICE AND NON INJURIOUS PRICE	27
8.1	CALCULATION OF USP/NIP	27
9	CONCLUSION	28
10	CONFIDENTIAL ATTACHMENTS	29
10.1	ATTACHMENT 1 EXPORT PRICE CALCULATIONS	29
10.2	ATTACHMENT 2 NORMAL VALUE CALCULATIONS	29
10.3	ATTACHMENT 3 DUMPING MARGIN CALCULATIONS	29
10.4	ATTACHMENT 4 NIP CALCULATION	29

Abbreviations

\$	Australian dollars
Act	Customs Act 1901
BASF	BASF Construction Chemicals USA
BASF Australia	BASF Construction Chemicals Australia Pty Ltd
CTMS	Cost To Make & Sell
FOB	Free On Board
Minister	Minister for Home Affairs
NIP	Non-injurious Price
SECA	Silicone emulsion concrete admixtures
Tariff Act	The Customs Tariff Act 1995
Tech-Dry	Tech-Dry Building Protection Systems Pty Ltd
Tech-Link	Tech-Link International Pty Ltd
the goods	the goods the subject of the application
USA	United States of America
USP	Unsuppressed Selling Price

1 Introduction

1.1 Application

On 22 July 2009, Tech-Dry Building Protection Systems Pty Ltd (Tech-Dry) lodged an application under section 269TB of the *Customs Act 1901* (the Act) (references to any section or subsection shall be references to sections or subsections of the Act).

The application requests that the Minister for Home Affairs (Minister) publish a dumping duty notice in respect of silicone emulsion concrete admixtures (SECA) exported to Australia from the United States of America (USA).

Tech-Dry is the sole manufacturer of SECA in Australia.

1.2 Company information

Tech-Dry is a privately owned company, which acts as trustee for the Dr Douglas A Kagi Scientific Research Trust, the manufacturer of the goods. Dr Douglas Kagi owns 100% of the issued capital of the company.

The application includes a group structure chart for Tech-Dry.

1.3 Previous SECA cases

There have been no previous cases involving SECA.

1.4 Consideration of the application

Pursuant to subsection 269TC(1), the decision whether or not to reject the application must be made within 20 days after the lodgement date. The application was lodged on 22 July 2009. The decision on whether or not to reject the application must be made no later than 11 August 2009.

Subsection 269TC(1) specifies the matters which must be considered in making a decision whether to reject the application. These matters are:

- whether the application complies with subsection 269TB(4);
- that there is, or is likely to be established, an Australian industry in respect of like goods; and
- that there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application.

The above matters are examined in the following sections of this report.

2 Does the application comply with subsection 269TB(4)?

Subsection 269TB(4) requires that the application be in writing, be in an approved form, contain such information as the form requires, be signed in the manner indicated by the form and be supported by a sufficient part of the Australian industry.

2.1 Approved form

The applicant has lodged an application, in writing, for the publication of a dumping duty notice and it is in the approved form. The form has been signed.

The applicant has provided all information required by the form. Two confidential versions and two public record versions of the application were submitted.

We consider that the non-confidential public record version of the application contains sufficient detail to allow a reasonable understanding of the substance of the information in accordance with the requirements of section 269ZJ.

2.2 Supported by Australian industry

The applicant has submitted that Tech-Dry is the only manufacturer of SECA in Australia and therefore accounts for:

- more than 50% of the total production or manufacture of like goods produced or manufactured by that portion of the Australian industry that has expressed either support for, or opposition to, the application; and
- not less than 25% of the total production or manufacture of like goods in Australia.

The application includes Australian production data in **Confidential Appendix A1**. As Tech-Dry is the sole manufacturer of SECA in Australia, the Appendix A1 data represents the production volume of SECA by Tech-Dry in the twelve months to 30 June 2009.

Based on the information provided in the application, we consider that the application is supported by a sufficient part of the Australian industry.

2.3 Conclusion – Compliance with subsection 269TB(4)

Based on the information submitted by the applicant, we consider that the application complies with subsection 269TB(4).

3 Is there an Australian industry in respect of like goods?

3.1 The goods the subject of the application

3.1.1 Description

The imported goods the subject of this application (the goods) are silicone emulsion admixtures for concrete or similar cementitious products.

3.1.2 Product information

The applicant provided the following additional details in respect of the goods:

"(The imported goods) contains n-octyltriethoxysilane as the key active component. N-octyltriethoxysilane is part of the alkylalkoxysilane group or one of the organic silicone family including alkylalkoxysilanes with linear or branched alkyl carbon chain length from C1 to C20 or with a phenyl group. Such silicones also include alkylalkoxysiloxanes (siloxanes), polysiloxanes, silicone resins and functional silicones also including materials which contain silicones. The (imported goods) may also contain the above mentioned silicones as the key active or co-active ingredients. The product also contains non-silicone ingredients such as ionic or nonionic surfactants or stabilisation agents or additives including silicone additives which not only help to stabilise the emulsion but also contribute to the performance of the final product.

This silicone emulsion admixture is...used for water-repellency and efflorescence control applications for concrete or similar cementitious products including concrete block, concrete paving, retaining wall units, concrete roof tiles and pre-cast or pre-stressed concrete. (T)his product also enables increased production rates and better visual appeal of the manufactured concrete products. The product also helps to increase strength and improve colour vibrancy of concrete and provides excellent wind-driven rain resistance...

Silicone emulsion admixtures are claimed to be higher value products than those of traditional concrete admixtures such as fatty acid types of concrete admixtures..."

While the application is taken to cover any goods meeting the description, it makes particular reference to goods exported from the USA manufactured by BASF Construction Chemicals USA (BASF), and currently marketed under the trade name Rheopel Plus. The application includes the material safety data sheet for the imported goods at **Non-Confidential Attachment A-3.1.2**.

3.1.3 Tariff classification

The applicant identifies the goods as classified to subheading 3824.40.00 of Schedule 3 to the *Customs Tariff Act 1995*. The rate of duty on goods imported under this subheading from the USA is free. This classification was confirmed by the Australian

Customs and Border Protection Service's (Customs and Border Protection) Tariff Operations Section.

3.2 Locally produced like goods

Subsection 269T(1) defines like goods as goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration have characteristics closely resembling those of the goods under consideration.

The applicant claims that the Australian goods are alike in most, if not all, characteristics to the imported goods. The applicant claims that similarity in characteristics is evident in the physical, commercial, functional and production likeness of the goods.

The applicant states that the locally made SECA are marketed under the brand Tech-Dry Block Emulsion. The application includes a Block Emulsion data sheet at **Non-Confidential Attachment A-3.3.1** and a material safety data sheet identifying the properties at **Non-Confidential Attachment A-3.3.2**.

The applicant states that the product was developed in Australia by the company and introduced in Germany for the purpose of sale to concrete manufacturers. The applicant states that a German chemical company instead began manufacturing the product, and that company was subsequently bought out by another company that was in turn bought out by BASF, which is now manufacturing the product in the USA. The applicant claims that the imported and locally made products are manufactured according to very similar processes from similar raw materials.

We examined the information provided in the application and note the following similarities between Rheopel Plus and Tech-Dry's Block Emulsion:

- physical likeness: the application includes a comparative table as well as technical data sheets for both the goods made in Australia and the goods the subject of the application which include the technical specifications. The table shows that many of the technical specifications of the locally produced and imported goods are similar;
- commercial likeness: the goods made in Australia and the goods the subject of the application compete directly in the same marketplace. Both goods are used for the same applications in the same industries;
- functional likeness: the goods made in Australia and the goods the subject of the application are functionally substitutable; and
- production likeness: the goods made in Australia and the goods the subject of the application are manufactured from similar raw materials using a similar manufacturing process.

Conclusion

Based on the information contained in the application we consider that the applicant manufactures and sells goods in the Australian market that are like goods to the goods the subject of the application.

3.3 Manufactured in Australia

Subsections 269T(2) and 269T(3) specify that for goods to be regarded as being produced in Australia they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

3.3.1 Manufacturing/production process

The applicant states that the manufacture of SECA involves a number of production processes, details of which are included in the confidential version of the application.

The main value adding process is the emulsification. The applicant states that this involves dispersing oily organic materials in an aqueous phase. Emulsification is defined as a mechanical shearing process. The applicant stated that making a silicone emulsion is a scientifically and technically difficult process, and that various difficulties associated with the manufacture were overcome by intensive research and development undertaken by Tech-Dry.

The applicant states that all raw materials are sourced from local suppliers in Australia, but that the silicone raw materials and n-octyltriethoxysilane used in the production of SECA are imported by a local supplier.

3.3.2 Substantial manufacture

The applicant states that the manufacture of SECA from raw materials takes place at Tech-Dry's facility located at South Melbourne, Victoria.

Conclusion

Based on the information contained in the application, we consider the manufacturing process undertaken by Tech-Dry to be a substantial process in the manufacture of SECA. We therefore consider that the goods made and sold by the applicant can be regarded as being produced in Australia.

3.4 Australian market

3.4.1 Market demand

The applicant claims that traditional water repellent admixtures for concrete masonry were fatty acid-based materials such as oleates and stearates, which had been used for concrete for many years. The applicant states that fatty acid types of admixtures are cost effective products and can achieve reasonable water repellent performance for concrete. Admixtures are generally distributed via construction chemical supplier networks. The applicant claims that the key supply networks in Australia are BASF Construction Chemicals Australia Pty Ltd (BASF Australia), (formerly Degussa or Master Builders), W R Grace, and Parchem Construction Supplies.

The applicant claims that the demand for concrete admixtures in Australia grows constantly but may vary according to variation of the activity of the building industry. There are no seasonal fluctuations associated with the demand apart from Christmas and Easter shutdowns.

The applicant states that water repellent admixtures have been used in the concrete industry throughout the world, however the fatty acid types of admixtures exhibit less durability within the concrete products and often fail to maintain long term performance.

The applicant claims that it, in conjunction with the Victoria University of Technology, developed an innovative silicone admixture technology in 1995. The new technology was then commercialised by Tech-Dry. The applicant claims that the new admixture has a clear advantage over the traditional fatty acid-based admixture particularly for its excellent water repellent performance and long-term durability.

The applicant states that although the new silicone admixture has a clear advantage over the traditional admixtures, the high cost of the silicone admixture has limited its application in the concrete industry, and that the sales volume has been low compared to that of the traditional admixtures. The applicant claims that evidence shows that the demand for silicone admixture from the concrete industry has significantly increased over the past 2 years.

The applicant claims that there are no other similar commercial silicone admixture products that compete with the imported goods and its own product. The applicant claims that the traditional fatty-acid based admixtures exhibit lower quality and durability and do not compete with the silicone emulsion admixtures.

3.4.2 Market supply

The application includes an estimation of the Australian market size for SECA and market shares in **Confidential Appendix A2**. The Australian market data is provided on a financial year basis and is based on volume in litres (L) and value in Australian dollars (\$) of sales by the Australian industry and an estimation of volume and sales of imported product. The application includes details of one known importer and the source of supply.

The applicant states that locally manufactured SECA is produced by Tech-Dry and marketed and sold by Tech-Dry, and Tech-Link International Pty Ltd (Tech-Link), an unrelated company. The applicant also states that the goods imported from the USA are produced by BASF and marketed and distributed in Australia by BASF Australia.

The applicant states that market volume is estimated based on information obtained from its customers.

The applicant claims that according to BASF's website it began exporting the goods to Australia in 2006. However, the applicant claims that based on feedback from its customers and sales figures it believes it suffered injury as a result of the goods from the USA from late 2007. The applicant claims that there are no other imports of the goods from any other country.

The Australian market from 2005/06 to 2008/09 was examined using information supplied by the applicant and information obtained from the Customs and Border Protection import database. This information shows that SECA may have been imported into the Australian market since late 2007. The Australian market for total SECA (imported and locally manufactured) is shown in Chart 1.

We note that the data stored in the Customs and Border Protection import database does not permit accurate identification of SECA information because of the broad nature of the tariff classification and the goods descriptions used in that classification. Therefore we

have accepted the applicant's estimates of market size and market share for the purpose of market analysis.

Chart 1 – Total Australian market



3.5 Australian industry information

3.5.1 Australian industry's sales

The applicant provided a summary of sales data in **Confidential Appendix A3** for both domestic and export sales by grade for the periods 2005/06, 2006/07, 2007/08 and 2008/09.

The applicant also provided detailed information relating to all domestic sales of SECA during the twelve months to 30 June 2009 in **Confidential Appendix A-4**. We reconciled the total sales volume and value of like goods in 2008/09 to the data in **Confidential Appendix A3** and **Confidential Appendix A-6-1** and are satisfied that the sales information as presented is reasonable for the purpose of assessing the economic condition of the industry

The applicant also included commercial documentation for selected domestic sales at **Confidential Attachments A-5.9.1** and **A-5.9.2**.

3.5.2 General accounting/administration information

The application includes general accounting and administration information, in particular:

- chart of accounts (**Confidential Attachments A-6.3.1** and **A-6.3.2**);
- financial accounts for the financial years ending 30 June 2007 and 30 June 2008 (**Confidential Attachments A-6.3.3** and **A-6.3.6**);
- income tax returns for the financial years ended 30 June 2007 and 30 June 2008 (**Confidential Attachments A-6.3.4** and **A-6.3.5**); and

- management accounts for the period 1 July 2008 to 30 April 2009 (**Confidential Attachment A-6.4**).

The applicant's financial accounts are not audited.

3.5.3 Cost information

The applicant provided annual cost to make and sell (CTMS) information for 2005/06, 2006/07, 2007/08 and 2008/09 in **Confidential Appendix A-6.1** (domestic) and in **Confidential Appendix A-6.2** (export).

3.6 Conclusion – Australian industry

Based on the information in the application, we consider that there is an Australian industry producing like goods to the goods subject to the application. We also consider that the data contained in the application is sufficient for the purpose of analysing the economic condition of the industry since 1 July 2005.

4 Reasonable grounds for the publication of a dumping duty notice – economic condition of the industry

4.1 The applicant's claims

The applicant claims that the allegedly dumped exports of SECA from the USA have caused material injury in the form of:

- lost sales volume – the applicant claims that it has lost sales to key customers as a result of the introduction of product from BASF to the Australian market at significantly lower prices;
- lost market share - the applicant claims that the Australian market for SECA has grown, especially over the most recent two years, however its market share has fallen as a result of the introduction of goods from BASF at dumped prices;
- price undercutting – the applicant claims that the price being offered by BASF Australia to its Australian customers significantly undercuts Tech-Dry's prices, and is probably below BASF's cost to make and sell (CTMS);
- price suppression - the applicant claims that cost increases have not been offset by price increases in the market. The emergence of the goods from the USA at dumped prices has prevented Tech-Dry from increasing its prices to recover increases in raw material costs incurred since 2006/07;
- reduced profits and profitability - the decline in domestic sales volumes and the inability to raise selling prices to recover increases in costs have contributed to reductions in profits and profitability for Tech-Dry;
- other economic factors - the applicant claims that as it is a small company it is difficult to supply the information required by the application at Appendix A-7 in precise annual figures. However, the applicant claims that it has experienced injury across certain other economic factors as a consequence of the dumped exports, namely:
 - o reduced attractiveness to reinvest. The applicant claims that it conducted a major upgrade of production facilities in 2004, and is due for another upgrade. Due to the impact on sales of the dumped product from BASF these plans have been put on hold. In addition, the applicant states that if sales had continued as Tech-Dry had predicted prior to the introduction of the BASF product, it would have acquired the factory next door to expand production facilities, however this is currently not a viable option;
 - o reduced investment in research and development; and
 - o reduced confidence in the ability to sign supply contracts with key suppliers of raw material, and thereby negotiate better purchase prices.

4.2 Commencement of material injury

The applicant claims that material injury attributable to dumped exports of SECA from the USA commenced from late 2007. The applicant claims that it is difficult to establish the exact date that dumped imports commenced in Australia, however a time has been estimated based on feedback from customers and observations about Tech-Dry's sales of Block Emulsion.

For the purpose of this consideration report, we have examined the period from 1 July 2005 to 30 June 2009 for injury analysis purposes.

4.3 Approach to injury analysis

The financial data supplied in the application covers the financial years 2005/06, 2006/07 and 2007/08 and 2008/09.

4.4 Volume effects

4.4.1 Lost sales volume

The applicant claims loss of sales volume to dumped exports from the USA in 2007/08 and 2008/09. The applicant also claims a decline in overall production in 2007/08 and 2008/09.

In support of its claims of lost sales volume, the applicant provided evidence in the form of sales data in **Confidential Appendices A2, A3 and A6**; and an indexed table of sales quantities.

The following chart shows the movement of total SECA sales volume for the applicant for domestic sales from 2005/06 to 2008/09.



Our examination of the Australian industry domestic sales volume data for the period 2005/06 to 2008/09 indicates that total sales volume of SECA sold domestically by the applicant increased from 2005/06 to 2006/07, then declined each year through to 2008/09.

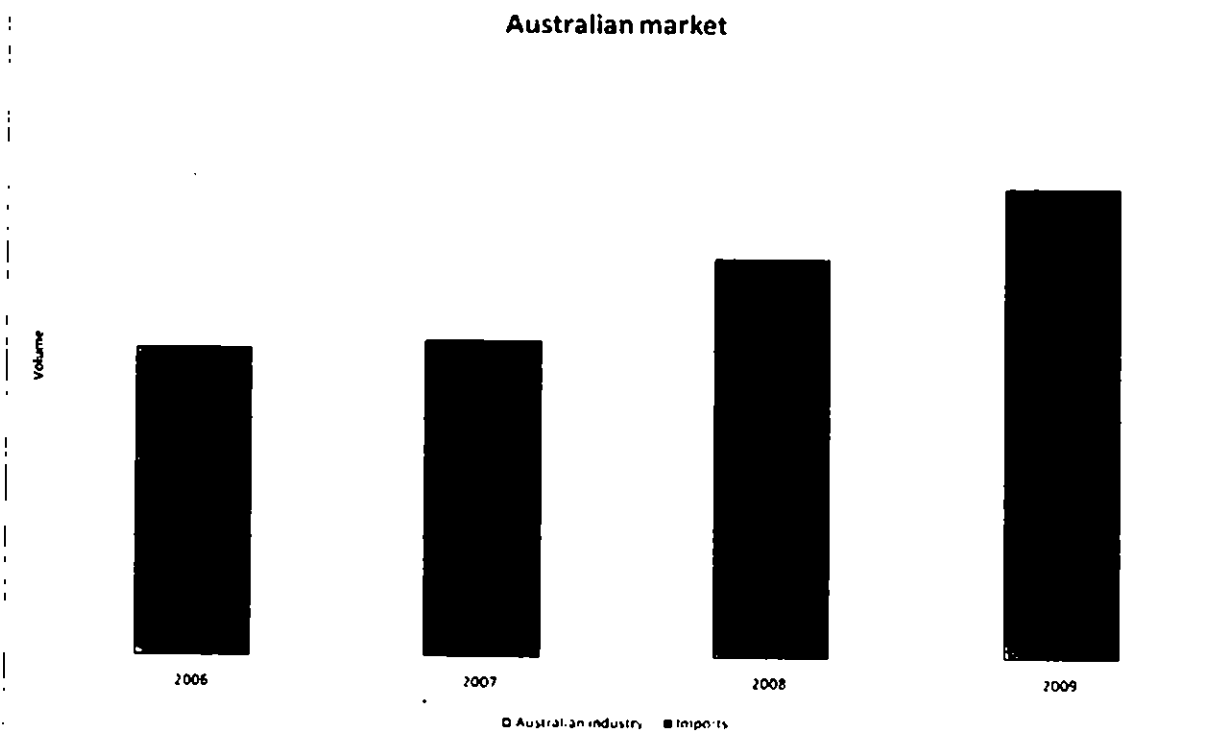
Conclusion – lost sales volume

Based on the information contained in the application, we are satisfied there is evidence that the Australian industry has lost sales volume.

4.4.2 Lost market share

The applicant claims that USA exports have captured a share of the Australian market for SECA at the expense of Tech-Dry.

The applicant provided an estimate of market share in **Confidential Appendix A2**. Market share based on the applicant's estimation of volume is shown in the following chart.



Our analysis of the data indicates that the

- the Australian market, of which the Australian industry had a 100% share, remained relatively stable from 2005/06 to 2006/07;
- imports emerged in 2007/08, and increased their market share in 2008/09; and
- the Australian industry's market share decreased from 2006/07 to 2008/09.

Conclusion – lost market share

Based on the information contained in the application and Customs and Border Protection's import database, we are satisfied there is evidence that the Australian industry has lost market share over the injury analysis period.

4.5 Price effects

Price effects may be in the form of:

- price undercutting, which occurs when imported product is sold at a price below that of the Australian manufactured product;
- price depression, which occurs when a company, for some reason, lowers its prices; and/or
- price suppression, which occurs when price increases for the Australian industry's product, which otherwise would have occurred, have been prevented.

4.5.1 Price undercutting

The applicant claims that USA imports have been at prices which have significantly undercut Australian industry selling prices.

In support of its claims of price undercutting, the applicant provided evidence in the form of offers by BASF Australia to an Australian customer **Confidential Attachment A-4.2.2**.

Conclusion – price undercutting

Based on the information contained in the application we are satisfied there is some evidence that the applicant's selling prices have been undercut by imports of SECA from the USA.

4.5.2 Price depression

The applicant claims that it has had to lower its prices in order to compete with prices being offered by BASF Australia.

The trend in weighted average unit selling prices for SECA sold domestically by the applicant in the injury analysis period can be observed in Chart 4 in the following section.

Conclusion – price depression

Based on the information contained in the application, we are not satisfied there is evidence that the applicant has experienced price depression.

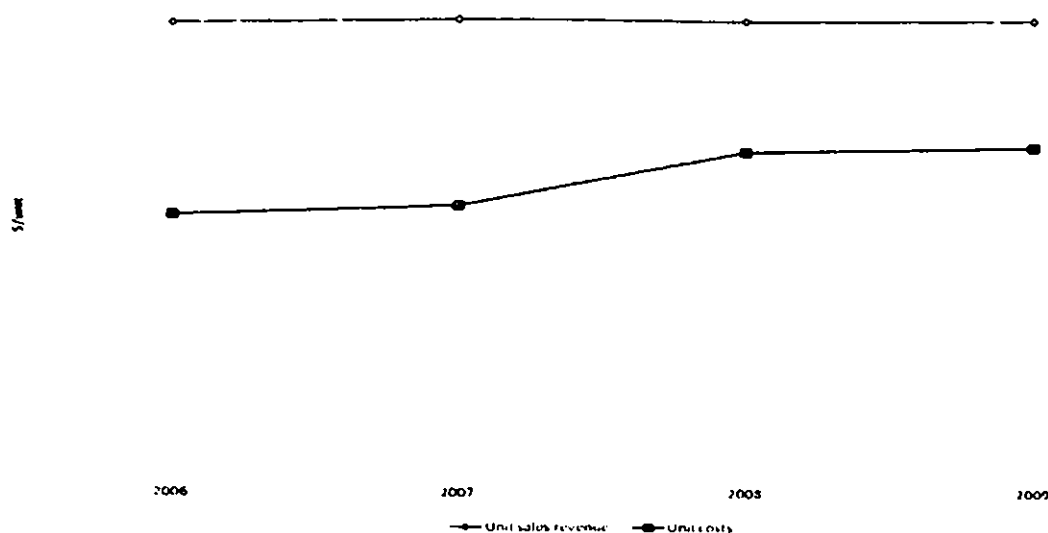
4.5.3 Price suppression

The application includes CTMS data for domestic sales of SECA in **Confidential Appendix 6.1**. The application also includes indexed tables of cost and price variations for the period 2005/06 to 2008/09.

The applicant claims that cost increases have not been offset by price increases in the market. The USA imports at allegedly dumped prices have prevented Tech-Dry from increasing its prices to recover the cost of raw material increases incurred in 2007/08 and 2008/09.

The trends in weighted average unit CTMS and weighted average unit selling price for SECA sold domestically by the applicant over the injury analysis period are shown in the chart below.

Australian industry CTMS and prices - domestic sales



Based on analysis of the data we found that the weighted average unit CTMS for SECA sold domestically by the applicant increased throughout the injury analysis period. At the same time, the weighted average unit selling price for SECA sold domestically remained stable.

Conclusion – price suppression

Based on the information contained in the application we are satisfied there is evidence that the applicant has experienced price suppression.

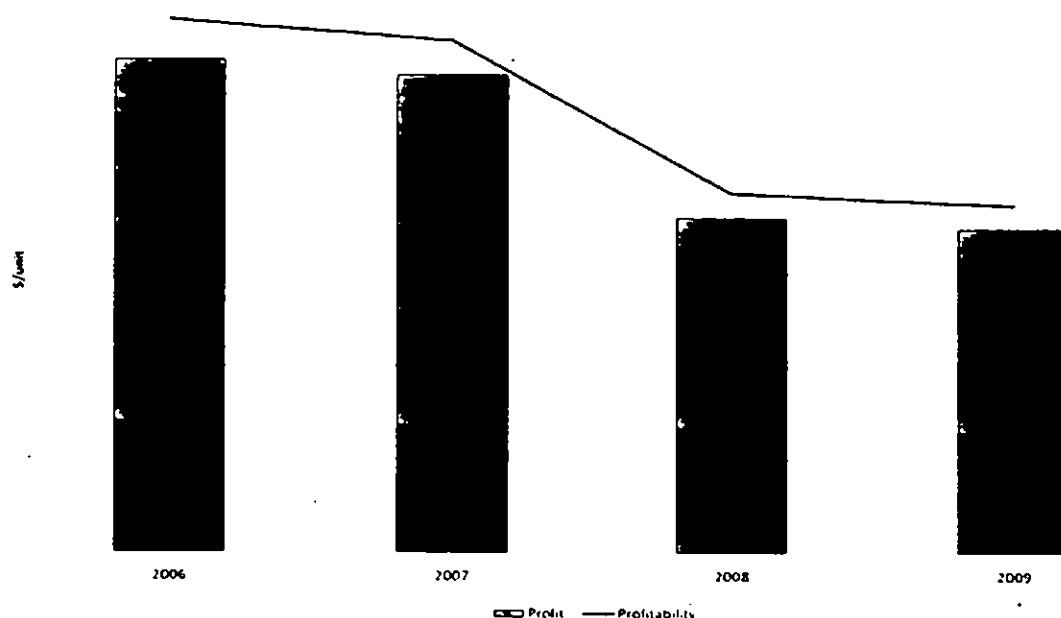
4.6 Profit effects

The applicant claims that the decline in domestic sales volumes and the inability to raise selling prices to recover increased costs has contributed to reductions in profits and profitability for Tech-Dry. The applicant claims that the longer term impact of the dumped prices will see further declines in selling prices for the Australian industry followed by significant reductions in profits and profitability.

The applicant supported its claims of lost/reduced profits and profitability with evidence in the form of profit and profitability data in **Confidential Appendix A6**; and indexed tables of profit and profitability variations for the period 2005/06 to 2008/09.

The following chart shows the movements in profits and profitability over the injury analysis period.

Australian industry - Profit and Profitability - domestic sales



Based on analysis of the data we found that profits from the applicant's domestic sales of SECA, and the profitability on those sales, decreased throughout the injury analysis period.

Conclusion – profit and profitability

Based on the information contained in the application, we consider there is evidence that the applicant has experienced reduced profits and profitability.

4.7 Other economic factors

As previously discussed, the application does not include data on other economic factors in Appendix A7. The applicant states that as it is a small company it is difficult to provide precise figures for the factors listed in Appendix A7. However, the applicant states that it has suffered reduced attractiveness to reinvest, and invest in research and development, and reduced confidence in negotiating key supply contracts.

We note that it is a requirement of the application form that the applicant complete Appendix A7. However, we recognise the difficulties a small company might have in compiling the data required for that appendix. We consider that, notwithstanding the lack of Appendix A7 data provided by the applicant, the applicant's other injury claims in relation to lost sales, profits and profitability, and price suppression, are persuasive for initiation purposes.

Data required by Appendix A7 will need to be obtained and verified as part of the investigation if the application is not rejected.

4.8 Conclusion – economic condition of the industry

Based on an analysis of the information contained in the application we consider that the applicant has experienced injury in the form of:

- lost sales volume;
- loss of market share;
- price suppression;
- reduced profits; and
- reduced profitability.

FILE 74

5 Reasonable grounds for the publication of a dumping duty notice – Dumping

5.1 General**5.1.1 Exporter/Importer**

The applicant identifies one producer/exporter of SECA from the USA:

BASF Construction Chemicals USA
23700 Chagrin Boulevard
Cleveland, Ohio
44122-5544
United States of America
Tel: +1 800-628-9990

The applicant identifies one importer of the goods manufactured by BASF USA:

BASF Construction Chemicals Australia Pty Ltd
11 Stanton Road
Seven Hills, NSW 2147
Tel: (02) 8811 4200

5.1.2 Analysis period

We examined the period July 2008 to June 2009 to assess whether the applicant's claims in relation to dumping were reasonable.

5.1.3 Import volumes

Subsection 269TDA(4) requires that the total volume of the goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped is taken to be a negligible volume if, when expressed as a percentage of the total Australian import volume, it is less than 3%.

The applicant estimated the volume of SECA imported to Australia by BASF during 2007/08 and 2008/09 based on feedback from its customers and observations about its sales data. The applicant states that BASF is the only exporter of the goods to Australia.

Based on analysis of data from Customs and Border Protection's import database, we consider it is reasonable to conclude that BASF was the only exporter of the goods in 2008/09.

Conclusion

Based on available evidence, we consider that the volume of SECA exported from the USA in 2008/09 was greater than 3% of the total import volume.

5.2 Export price

The applicant supplied a deductive export price using an estimated retail price (for the nine months to March 2009) in Australia based on feedback from their customers in the Australian market, and working back to a free-on-board (FOB) export price. Costs from FOB to landed into-store price were not supported by any documentation. The applicant also provided a quote from BASF Australia for the supply of the goods in the Australian market in April 2009.

Customs and Border Protection calculated deductive export prices per 1,000 litres, based on the two retail prices provided by the applicant and using other available information for the costs from FOB to the landed into store price. Customs and Border Protection also compared these export prices with export prices obtained from Customs and Border Protection's import database.

Conclusion

Based on the information contained in the application and the data contained in Customs and Border Protection's import database we consider that the applicant's assessment of export prices is reasonable. Customs and Border Protection's analysis is at **Confidential attachment 1**.

5.3 Normal value

5.3.1 Selling price in the exporter's domestic market

The applicant provided a quoted price for the supply of the goods from BASF into the USA domestic market around March 2009.

Customs and Border Protection calculated a selling price per 1,000 litres based on the information supplied by the applicant.

Conclusion

Based on an analysis of the information contained in the application we consider that the applicant's assessment of normal value based on a quoted price is reasonable.

5.3.2 Selling price in the exporter's domestic market using another method

The applicant also calculated a constructed selling price to estimate the normal value for the USA. The applicant's constructed selling price for the USA was based on Tech-Dry's costs and profit. The applicant made the following adjustments to account for BASF being a larger organisation than Tech-Dry:

- Raw material costs were discounted by 10% in allowance for BASF having better buying power;
- Production costs were discounted by 10% in allowance for BASF having larger scale production and market to sell into; and
- Administration and selling costs were increased by 20% due to higher overheads of a larger organisation.

Customs and Border Protection calculated a constructed domestic price using information provided by the applicant. However, Customs and Border Protection discounted the administration and selling costs by 10% in line with the other costs and also used a lower rate of profit than that used by the applicant. Customs and Border Protection does not

agree that a larger organisation will necessarily have higher administration and selling costs of the magnitude suggested by the applicant. Customs and Border Protection's constructed normal value is lower than that calculated by the applicant.

Conclusion

The applicant's normal value constructed from estimates of costs and profit may be on the high side due to its assumptions about administration and selling costs and rate of profit, however it is only slightly higher than the selling price based on a quoted price. Customs and Border Protection's analysis and calculation of normal values are at **Confidential attachment 2.**

5.4 Adjustments

The applicant did not provide information for adjustments to the normal value.

The export prices are calculated at an FOB level whilst the domestic selling prices are at an ex-factory level. Customs and Border Protection identified FOB costs in the USA as an upward adjustment to the domestic selling prices.

The goods sold on the domestic market appear to be identical to the goods exported to Australia. No other adjustments are considered necessary.

Conclusion

Customs and Border Protection considers an adjustment should be made to the constructed normal value to take the ex-factory price to an FOB price.

5.5 Dumping margin

The applicant calculated a dumping margin for SECA exported from the USA to Australia of 228%, using the constructed normal value and a deductive export price from an estimated retail price in Australia.

Customs and Border Protection applied a more conservative approach than the applicant to calculating a dumping margin and used the highest calculated deductive export price compared to the lowest calculated normal value.

Using the above approach Customs and Border Protection calculated a dumping margin of 69%.

Customs and Border Protection's analysis and calculations of dumping margins are at **Confidential attachment 3.**

Conclusion

We have examined the data for accuracy and reasonableness and our assessment indicates that the dumping margins are not negligible.

5.6 Conclusion

Based on an analysis of the information contained in the application we consider that the applicant's claim that the goods have been exported to Australia from the USA at dumped prices is reasonable.

17/08
Page 70

6	Reasonable grounds for the publication of a dumping duty notice - Causal link
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6.1 Causal link

6.1.1 The Applicant's claims

The applicant states that there is a causal link between injury and dumped imports. In support of its case, the applicant claims that:

Lost volume and market share

- SECA was a new product in the concrete admixture market in 1995. It took some time and marketing effort to convince concrete product manufacturers to adopt the new technology;
- Tech-Dry's sales figures show increasing sales volumes up until 2006/07, and an increase in the size of the Australian market, showing that the market for SECA was reaching maturity and that significant growth could be expected in the future;
- Tech-Dry's sales and market share fell following the introduction of dumped exports from the USA in late 2007;
- BASF has used an aggressive marketing strategy based on price in order to capture sales in the Australian market; and
- Tech-Dry has evidence of losing customers to BASF, and of current customers considering switching from Tech-Dry to BASF.

Price suppression, reduced profits and profitability

- the applicant has experienced an increase in the cost of raw materials, particularly since 2006/07. This, combined with the fall in the Australian dollar in 2008, has resulted in an increased CTMS for the product;
- price pressure in the Australian market due to exports of SECA from the USA at dumped prices has prevented the applicant from increasing its selling prices to recover cost increases. This has resulted in reduced profits and profitability;
- the applicant is still under pressure from customers to reduce the price of its product to match the dumped price offered by the manufacturer of the goods from the USA.

6.1.2 Assessment

Our examination of the information contained within the application, and other relevant information, indicates evidence of:

- the presence of dumped goods in the Australian market:
 - o imports from the USA of SECA commenced in 2007;

- SECA from the USA appears to be entering the Australian market at dumped prices;
- price undercutting:
 - the quoted price of the goods by the USA manufacturer is well below the price offered by the Australian industry, and it is likely that this price has influenced customers to switch from the Australian industry to the imported product;
- price suppression:
 - production costs in Australia have been steadily increasing primarily due to the rising cost of raw material and the depreciation of the Australian dollar;
 - the price of the Australian product remained steady in 2007/08 and 2008/09 while unit CTMS increased;
- volume effects:
 - the overall market size appears to have increased in 2007/08 and 2008/09;
 - applicant's sales volume declined in 2007/08 and 2008/09 despite the increase in market size;
 - exports of SECA from the USA to Australia commenced capturing market share in 2007/08;
 - there are no other identifiable sources of SECA to Australia during the injury analysis period;
 - imported SECA from the USA are continuing to be offered at very low prices, which may further impact the applicant's sales volume; and
- reduced profits and profitability
 - the applicant has experienced reduced profits and profitability due to its competition with dumped SECA from the USA; and
 - current low quoted prices will impact the applicant's ability to improve profits/ profitability.

Conclusion

We consider the price and volume effects from price undercutting and the consequent reduced revenues, profits and profitability amount to injury caused by the alleged dumping. We consider the applicant has demonstrated that the alleged dumping, of itself, has caused injury.

Materiality

The applicant refers to Confidential Appendices A2 and A6.1 that show the loss of sales and profitability as evidence of the materiality of the claimed injury. The applicant also refers to its estimate of the volume of lost sales to BASF due to dumped prices. The applicant states that the price erosion due to the pressure on Tech-Dry to match the import prices will significantly reduce Tech-Dry's profits to the point of driving it out of the local SECA market.

We consider that the reduced sales revenue and the loss of profits demonstrated in the applicant's financial results for 2007/08 and 2008/09, is not insignificant.

6.2 Factors other than dumping affecting economic performance

6.2.1 Export sales

The applicant provided CTMS data for export sales in *Confidential Appendix A-6.2* for 2005/06, 2006/07, 2007/08 and 2008/09.

We noted the applicant's export sales have not historically comprised a major part of its SECA business, although export sales have increased significantly in 2008/09. However, we have been careful to isolate the effects of export performance from injury the applicant attributes to alleged dumping.

6.2.2 Increased cost of product

The applicant states that there are no substitutable products for the goods, as admixtures using the old technology have lower quality and durability. The applicant states that SECA is a more expensive product than the old technology, however the price has proven to be acceptable to the industry using the product. The rising costs of the raw materials used to make SECA has put pressure on Tech-Dry to keep costs at a reasonable level.

We expect that an investigation will consider the affect of these factors and other matters identified during the investigation on the economic performance of the Australian industry.

6.3 Conclusion

We consider the applicant has provided reasonable grounds for alleging that SECA exported from the USA at dumped prices has caused material injury to the Australian industry producing like goods.

7 Supplementary items

7.1 Subsidy

The application is not an application for countervailing duties.

7.2 Threat of material injury

The applicant states "the threat to Tech-dry domestic Block Emulsion business is current and is foreseeable and imminent if the dumped import continues."

This statement appears to be a claim in relation to 'continuation of material injury' rather than the 'threat of material injury'.

7.3 Close processed agricultural goods

The applicant does not consider this question to be applicable.

7.4 Exports from a non-market economy

The applicant does not consider this question to be applicable.

7.5 Exports from an 'economy in transition'

The applicant does not consider this question to be applicable.

7.6 Aggregation of volumes of dumped goods

The application is made in respect of SECA exported from the USA only.

8 Comparison of export price and non injurious price

8.1 Calculation of USP/NIP

Unsuppressed Selling Price (USP) and Non-Injurious Price (NIP) issues are examined at an early stage of an investigation and, where possible and appropriate, preliminary examinations are made during the application consideration period for the purpose of assessing injury and causal link.

Customs and Border Protection generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the USP.

Customs and Border Protection's preferred approach to establishing USPs observes the following hierarchy:

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

Having calculated the USP, Customs and Border Protection then calculates a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

The applicant has not provided USP or NIP estimates. This is not required by the application form. However, it is appropriate to compare the alleged dumped deductive export prices to NIP estimates. If the deductive export prices are greater than the NIP, it would suggest that dumping may not be causing material injury. If, on the other hand, the deductive export prices are lower than the NIP, this would support a finding that dumped imports have caused material injury to the Australian industry producing like goods.

In the case of SECA, and in the context of the alleged claim that injury commenced in late 2007, a USP has been established based on the applicant's selling prices in 2006/07, adjusted for cost increases. The NIP has been calculated by deducting from the USP amounts for overseas freight; landing, clearing and freight charges in Australia; and an estimate of the Australian importer's gross margin. Details of Customs and Border Protection's calculation are at **Confidential attachment 4**.

We noted that the export prices, both those provided by the applicant and that calculated by Customs and Border Protection, were significantly lower than the NIP, thereby supporting the view that the applicant has reasonably demonstrated that SECA exported to Australia from the USA at alleged dumped prices has caused material injury to the Australian industry producing like goods.

9 CONCLUSION

We have examined the application and other information considered relevant, and consider that:

- the application complies with subsection 269TB(4);
- there is an Australian industry in respect of like goods; and
- there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application.

Accordingly, we recommend that you as delegate of the CEO not reject the application for the publication of a dumping duty notice under subsection 269TB(1).

For the purposes of the investigation we recommend that:

- the investigation period to determine whether dumping has occurred be from 1 July 2008 to 30 June 2009; and
- Customs and Border Protection examine the Australian market and the economic condition of the industry from 1 July 2005 for the purposes of injury analysis.

Joanne Reid
Operations 1
10 August 2009

Rod Jones
Operations 1
10 August 2009

10 CONFIDENTIAL ATTACHMENTS

- 10.1 Attachment 1 Export price calculations**
- 10.2 Attachment 2 Normal value calculations**
- 10.3 Attachment 3 Dumping margin calculations**
- 10.4 Attachment 4 NIP calculation**