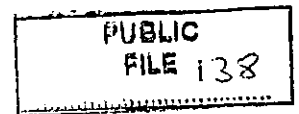




Australian Government
Australian Customs and
Border Protection Service



**INVESTIGATION OF THE ALLEGED DUMPING OF SILICONE
EMULSION CONCRETE ADMIXTURES**

**EXPORTED TO AUSTRALIA FROM THE UNITED STATES OF
AMERICA**

**PRELIMINARY AFFIRMATIVE
DETERMINATION NO.150**

November 2009

1. Contents

| | |
|---|-----------|
| 1. CONTENTS | 2 |
| 2. ABBREVIATIONS..... | 3 |
| 3. SUMMARY AND RECOMMENDATIONS | 4 |
| 3.1. RECOMMENDATIONS..... | 4 |
| 3.2. APPLICATION OF LAW TO FACTS | 4 |
| 3.2.1. AUTHORITY TO MAKE DECISION | 4 |
| 3.2.2. THE ROLE OF THE TRADE MEASURES BRANCH | 4 |
| 3.2.3. THE ROLE OF THE CEO OF CUSTOMS AND BORDER PROTECTION | 5 |
| 3.2.4. MATTERS OF WHICH THE CEO MUST BE SATISFIED BEFORE MAKING A PAD | 5 |
| 3.2.5. FINDINGS AND CONCLUSIONS..... | 5 |
| 4. BACKGROUND..... | 7 |
| 5. PRELIMINARY AFFIRMATIVE DETERMINATION | 7 |
| 5.1. ABILITY TO TAKE SECURITIES..... | 7 |
| 6. THE GOODS UNDER CONSIDERATION..... | 8 |
| 6.1. THE GOODS | 8 |
| 6.2. TARIFF CLASSIFICATION..... | 8 |
| 6.3. LIKE GOODS | 8 |
| 6.3.1. ASSESSMENT OF LIKE GOODS | 9 |
| 6.3.2. CONCLUSION ON LIKE GOODS | 9 |
| 7. THE AUSTRALIAN INDUSTRY | 10 |
| 8. IMPORTERS..... | 10 |
| 9. EXPORTERS..... | 10 |
| 10. AUSTRALIAN MARKET | 10 |
| 11. PRELIMINARY EXPORT PRICE..... | 11 |
| 12. PRELIMINARY NORMAL VALUE | 11 |
| 13. PRELIMINARY DUMPING MARGIN..... | 11 |
| 14. PRELIMINARY INJURY ANALYSIS | 12 |
| 14.1. SALES VOLUME..... | 12 |
| 14.2. PRICE SUPPRESSION AND DEPRESSION..... | 12 |
| 14.3. LOST PROFITS AND PROFITABILITY..... | 13 |
| 15. SUBMISSIONS CONSIDERED..... | 14 |
| 16. PRELIMINARY CAUSATION ASSESSMENT..... | 14 |
| 16.1. INJURY CAUSED BY OTHER FACTORS | 14 |
| 16.2. PRELIMINARY CONCLUSION ON CAUSATION | 15 |
| 17. PRELIMINARY NON-INJURIOUS PRICE ASSESSMENT | 15 |
| 18. RECOMMENDATION - PAD..... | 16 |
| 19. RECOMMENDATION - PROVISIONAL MEASURES | 17 |
| 20. ATTACHMENTS..... | 18 |

2. ABBREVIATIONS

| | |
|-------------------------------|---|
| ACDN | Australian Customs Dumping Notice |
| Australian industry | the Australian industry producing SECA |
| BASF | BASF Construction Chemicals USA |
| BASF Australia | BASF Construction Chemicals Australia Pty Ltd |
| CEO | Chief Executive Officer of the Australian Customs and Border Protection Service |
| CTMS | cost to make and sell |
| Customs and Border Protection | the Australian Customs and Border Protection Service |
| FOB | free on board |
| Minister | The Minister for Home Affairs |
| NIP | non-injurious price |
| PAD | preliminary affirmative determination |
| SECA | silicone emulsion concrete admixtures, the goods subject of the application |
| Tariff Act | <i>Customs Tariff Act 1995</i> |
| 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 |

3. SUMMARY AND RECOMMENDATIONS

This report provides the results of the Australian Customs and Border Protections Service's (Customs and Border Protection's) consideration of whether to make a Preliminary Affirmative Determination (PAD) and take securities in relation to the dumping investigation into silicone emulsion concrete admixtures (SECA) exported to Australia from the United States of America (USA).

3.1. Recommendations

Customs and Border Protection recommends that:

1. the Chief Executive Officer (CEO) of Customs and Border Protection be satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice and make a Preliminary Affirmative Determination to that effect; and
2. Customs and Border Protection require that securities be taken in respect of interim dumping duty that may become payable on SECA exported to Australia from the USA.

To give effect to the CEO and Customs and Border Protection's decisions, the following documents require signature:

- the determination at **Confidential Appendix 1**; and
- the public notice at **Non-confidential Appendix 1**.

3.2. Application of law to facts

3.2.1. Authority to make decision

Division 2 of Part XVB of the *Customs Act 1901*¹ sets out procedures for making a Preliminary Affirmative Determination.

3.2.2. The role of the Trade Measures Branch

The Trade Measures Branch may prepare a report for the CEO at any time after 60 days from the date of initiation of an investigation considering whether there appears to be sufficient grounds for the publication of a dumping duty notice.

The report will have regard to the application concerned and any submissions concerning the publication of the notice that are received within 40 days after the date of initiation of the investigation.

If the CEO makes a PAD, Customs and Border Protection may, at the time of the PAD or at any later time during the investigation, require and take

¹ A reference to a division, section or subsection in this report is a reference to a provision of the Act, unless otherwise specified.

securities² in respect of interim dumping duty that may become payable if the officer of Customs taking the securities is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

3.2.3. The role of the CEO of Customs and Border Protection

The CEO may make a PAD, after having regard to the Trade Measures Branch report and any other matters the CEO considers relevant, if satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice or that it appears that there will be sufficient grounds subsequent to the importation into Australia of the goods.

If the CEO makes a PAD, public notice of this decision must be given. If Customs and Border Protection decides to require and take securities, the CEO must also give public notice of this decision.

The CEO's powers have been delegated to certain officers of the Trade Measures Branch.

3.2.4. Matters of which the CEO must be satisfied before making a PAD

Does there appear to be sufficient grounds for the publication of a dumping duty notice?

Yes. Customs and Border Protection is of the preliminary view that:

- the goods have been exported from the USA at less than normal value and are therefore dumped;
- there is an Australian industry producing like goods that is experiencing injury; and
- the dumped goods have caused material injury to the Australian industry.

3.2.5. Findings and conclusions

Customs and Border Protection made the following preliminary conclusions:

Dumping (Chapters 11, 12, and 13 of this report)

- export price for BASF Construction Chemicals LLC (BASF) be calculated under s.269TAB(1)(a) for the investigation period;
- normal value for BASF be calculated under s.269TAC(1) for the investigation period;
- a dumping margin of 80% to 90% over the investigation period, which is not negligible;
- the volume of dumped goods is not negligible;

² Under s.42.

Injury (Chapter 14 of this report)

- the Australian industry experienced a decline in market share in 2007/08 and 2008/09;
- the Australian industry has lost sales volume in 2007/08 and 2008/09 to levels below 2006/07;
- the Australian industry has experienced price suppression and price depression over the injury analysis period;
- the Australian industry has experienced reduced profits and profitability over the injury analysis period;

Causation (Chapter 16 of this report)

- customers of the Australian industry have used import prices from the USA to negotiate lower prices from Australian industry; and
- in some instances the Australian industry has been unable to match import prices from the USA, resulting in customers of the Australian industry switching to the imported product.

Customs and Border Protection has considered all relevant information and made a preliminary finding that there appears to be sufficient grounds for the publication of a dumping duty notice. Customs and Border Protection has therefore recommended that the CEO be so satisfied and make a PAD to that effect.

Customs and Border protection is also of the view that it is necessary to require and take securities to prevent material injury to the Australian industry occurring while the investigation continues. If a PAD is made, securities will be taken in respect of interim dumping duty that may become payable on SECA exported to Australia from the USA after a date to be determined if the recommendations contained in this report are accepted.

The findings, calculations and conclusions discussed in this report are of a preliminary nature and may change between the time of PAD publication and the publication of the Statement of Essential Facts.

4. BACKGROUND

On 22 July 2009, Tech Dry Building Protection Systems Pty Ltd (Tech Dry) lodged an application under section 269TB for the publication of a dumping duty notice in respect of SECA exported to Australia from the USA.

Following an examination of the application the delegate of the CEO decided not to reject the application and an investigation into the alleged dumping of SECA exported to Australia from the USA was initiated on 14 August 2009.

Customs and Border Protection published a notice in *The Australian* on 14 August 2009, and released Australian Customs Dumping Notice (ACDN) 2009/27, which contains further details on the investigation.

The investigation period, used to determine whether dumping has occurred, is from 1 July 2008 to 30 June 2009. Customs and Border Protection is examining the Australian market and the economic condition of the industry from 1 July 2005 to 30 June 2009 for the purposes of injury analysis.

5. PRELIMINARY AFFIRMATIVE DETERMINATION

At any time not earlier than 60 days after the date of initiation of an investigation as to whether there are sufficient grounds for the publication of a dumping duty notice in respect of goods the subject of an application, the CEO may, if he or she is satisfied:

- a) that there appears to be sufficient grounds for the publication of such a notice; or
- b) that it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation into Australia of such goods;

make a PAD under section 269TD to that effect.

In deciding whether to make a PAD, the CEO must have regard to the application concerned, and to any submissions concerning publication of the notice that are received by Customs and Border Protection within 40 days after the date of initiation of the investigation. The CEO may also have regard to any other matters that the CEO considers relevant. The CEO is not obliged to have regard to any submission received after day 40 if to do so would prevent the timely consideration of whether or not to make a PAD.

5.1. Ability to Take Securities

Customs and Border Protection may, at the time of making a PAD or at any later time during the investigation after a PAD is made, require and take securities under section 42 in respect of interim duty that may become payable if the officer of Customs taking the securities is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

6. THE GOODS UNDER CONSIDERATION**6.1. The Goods**

The goods the subject of the application (the goods) are silicone emulsion admixtures for concrete.

The following additional information was provided by the applicant to assist in understanding 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..."

6.2. Tariff Classification

The goods are classified to tariff subheading 3824.40.00 in Schedule 3 of the *Customs Tariff Act 1995*. The rate of duty for the goods from the USA is free.

6.3. Like Goods

Customs and Border Protection has visited Tech Dry and observed the manufacture of SECA.

Customs and Border Protection understands that imported and Australian products are substitutable due to their almost identical chemical composition.

6.3.1. Assessment of Like Goods

Customs and Border Protection has considered the following matters in assessing whether goods produced by the Australian industry are like to the goods:

- i. Physical likeness:
 - Australian industry products have similar chemical composition and generally possess similar physical characteristics to the imported SECA.
- ii. Commercial likeness:
 - Australian industry products compete directly with the imported goods in the Australian market.
- iii. Functional likeness:
 - Both imported and Australian produced goods have comparable or identical end-uses.
- iv. Production likeness:
 - Australian industry products are manufactured in a similar manner to the imported goods.

6.3.2. Conclusion on Like Goods

Customs and Border Protection considers that its assessment of like goods above supports a conclusion that the Australian products are identical to, or have characteristics closely resembling, the goods. Customs and Border Protection concludes that there is an Australian industry producing like goods to the goods.

7. THE AUSTRALIAN INDUSTRY

The application was lodged by Tech Dry, the only Australian manufacturer of SECA.

Customs and Border Protection has conducted verification visits with Tech Dry, as well as Tech Link International Pty Ltd (Tech Link), Tech Dry's distributor in Australia. The visit reports are on the public record.

8. IMPORTERS

Tech Dry identified one importer of SECA, being BASF Construction Chemical Australia Pty Ltd (BASF Australia). Following the initiation of the investigation, Customs and Border Protection conducted a search of its database and did not identify any additional importers.

Customs and Border Protection undertook a verification visit to BASF Australia and the visit report is on the public record.

The delegate of the CEO has had regard to the matters discussed in this visit report in deciding whether to issue a PAD and impose securities.

9. EXPORTERS

Tech Dry identified one exporter of SECA, being BASF. A search of Customs and Border Protection's database did not identify any additional exporters.

Customs and Border Protection received a completed exporter questionnaire from BASF. The delegate of the CEO has had regard to the matters discussed in this visit report in deciding whether to issue a PAD and impose securities. Customs and Border Protection has not yet visited BASF to verify information provided in its exporter questionnaire response but will seek to do so as it continues its investigations.

10. AUSTRALIAN MARKET

Customs and Border Protection has combined Australian industry sales data with data gathered from BASF Australia to estimate the size of the Australian market for SECA during the investigation period. Summary data for the Australian market is at **Confidential Appendix 2**.

The data shows that the market for SECA grew over the injury period, with the imported product entering the market in the 2007/08 financial year, reducing Tech Dry's market share. Tech Dry's market share decreased further in 2008/09.

11. PRELIMINARY EXPORT PRICE

Having regard to BASF's exporter questionnaire response, Customs and Border Protection has preliminarily determined that:

- the goods were exported to Australia otherwise than by the importer;
- the goods have been purchased by the importer from the exporter; and
- although the importer and the exporter are related parties, the goods were purchased in arms length transactions.

Customs and Border Protection has preliminarily calculated monthly weighted average FOB export prices under s.269TAB(1)(a), using the invoice price from the exporter to the importer.

Preliminary export price calculations are at **Confidential Appendix 3**.

12. PRELIMINARY NORMAL VALUE

Customs and Border Protection has preliminarily determined a normal value based on the domestic sale prices in BASF's exporter questionnaire response. Customs and Border Protection's preliminary assessment is that s.269TAC(1) is suitable for use in calculating normal values.

Customs and Border Protection has made adjustments to the normal value for inland freight, domestic selling and administrative expenses, royalties and credit terms. The size of the adjustments was based on information contained in BASF's questionnaire response.

Preliminary normal value calculations are at **Confidential Appendix 3**.

13. PRELIMINARY DUMPING MARGIN

Each monthly unit normal value was weighted by corresponding monthly export volumes and compared to the weighted average export prices to determine a weighted average dumping margin for the investigation period.

The preliminary dumping margin was in the range of 80% to 90%.

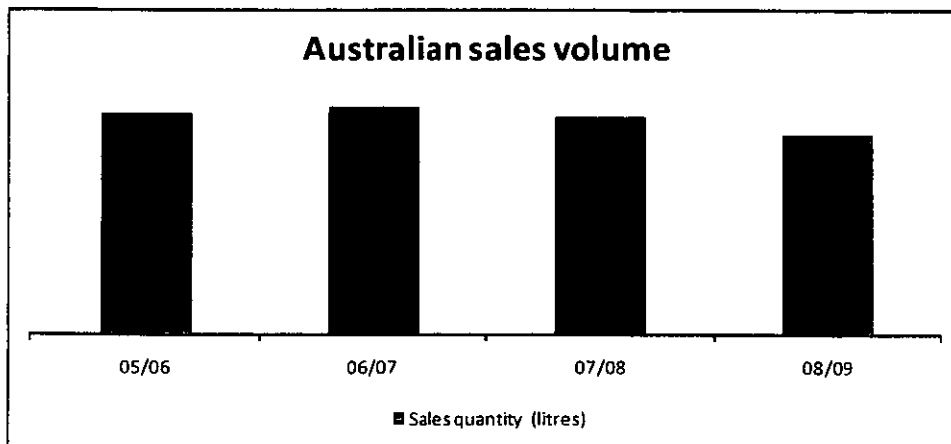
Customs and Border Protection identified that there were no imports of SECA to Australia during the investigation period other than those exported by BASF from the USA. The volume of dumped goods is therefore not negligible.

14. PRELIMINARY INJURY ANALYSIS

For the purpose of this investigation, the period from 1 July 2005 to 30 June 2009 is being examined for injury analysis purposes.

14.1. Sales volume

The following chart shows Tech Dry's sales volume during the injury analysis period. Because the Australian industry's SECA products are sold in more than one level of active concentration, the sales volumes have been re-calculated to a standardised concentration. The level of concentration is confidential to the Australian industry.



The data indicates that sales volumes peaked in 2006/07, then decreased in both 2007/08 and 2008/09 to levels below 2005/06. It therefore appears that Tech Dry has experienced injury in the form of lost sales. The analysis is at **Confidential Appendix 2**.

Analysis of the Australian industry's market share is contained in section 10 above.

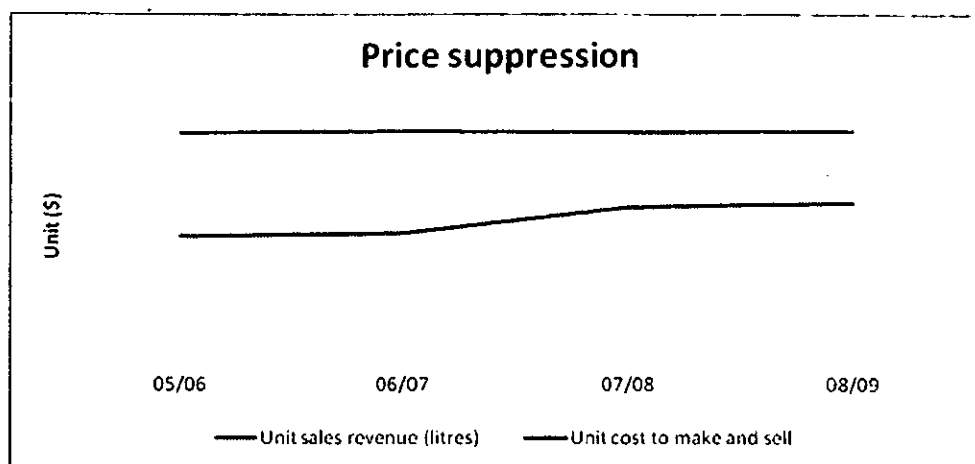
14.2. Price Suppression and Depression

Price suppression occurs when price increases for the Australian industry's product, which otherwise would have occurred, have been prevented.

Price depression occurs when a company, for some reason, lowers its prices.

Tech Dry claimed that its prices are suppressed, due to pressure for it to match prices quoted for imported SECA.

The chart below illustrates Tech Dry's unit cost to make and sell (CTMS) like goods, and its unit sales revenue.

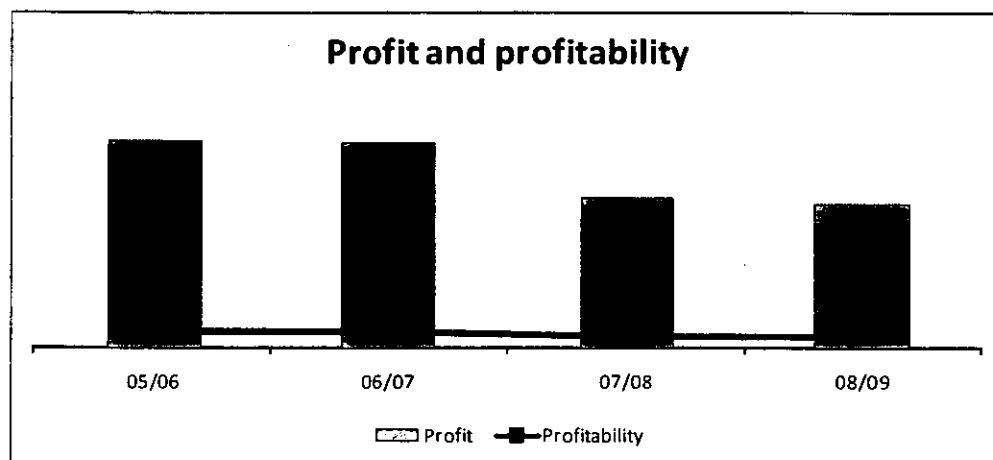


The weighted average unit CTMS for SECA sold domestically by the company increased throughout the injury analysis period. At the same time, the weighted average unit selling price for SECA sold domestically remained stable. It therefore appears Tech Dry has experienced injury in the form of price suppression. The analysis is at **Confidential Appendix 2**.

Price depression during the injury analysis period is not evident from the chart; however the applicant claimed that price reductions to existing customers occurred from June 2009. The applicant provided copies of recent invoices in support of this claim.

14.3. Lost Profits and Profitability

Tech Dry claimed to have experienced injury in the form of reduced profits and profitability. The following chart illustrates Tech Dry's profit and profitability on sales of like goods.



Profits from the company's domestic sales of SECA, and the profitability on those sales, decreased throughout the injury analysis period. It therefore appears Tech Dry has experienced injury in the form of reduced profits and profitability. The analysis is at **Confidential Appendix 2**.

15. SUBMISSIONS CONSIDERED

The delegate of the CEO has had regard to the matters raised in visit reports posted to the public record for this investigation as at 19 November 2009.

No submissions have been received in relation to the investigation.

16. PRELIMINARY CAUSATION ASSESSMENT

Customs and Border Protection has received evidence that supports the claim that SECA exported from the USA to Australia in the injury analysis period by BASF appears to have caused material injury to the Australian industry.

To put context to the consideration of injury, Customs and Border Protection understands that there are three major manufacturers of concrete products in Australia, being Adbri, Boral and Austral Masonry. This market concentration results in the Australian industry being particularly vulnerable to price pressure from competitors.

Following are the most relevant factors in Customs and Border Protection's consideration of injury:

1. There is evidence that significant customers of Tech Dry have changed supplier from Tech Dry to BASF in the second half of 2008;
2. Quotes from BASF to an Australian customer during the investigation period show a significantly lower price for the BASF product than the prevailing price for Tech Dry's product;
3. A letter from Tech Dry to one of its customers shows a reduction in price for sales made from June 2009;
4. Orders and invoices relating to sales to one of Tech Dry's customers show a price that is below Tech Dry's CTMS. Tech Dry claimed such a price was necessary to avoid losing the customer to BASF; and
5. Tech Link claims that a verbal agreement has been made between it and a customer to reduce the price.

Collectively, the evidence listed above points to pressure on sales prices and volumes that can be achieved by Tech Dry from its existing customer base.

Customs and Border Protection considers that there appear to be sufficient grounds to conclude that the Australian industry has been unable to match prices of the imported product and it has therefore lost sales volume. In addition, customers of the Australian industry have used prices of SECA from the USA to negotiate lower prices from the Australian industry. Both these factors have led to the Australian industry experiencing material injury.

16.1. Injury Caused by Other Factors

Customs and Border Protection notes the possible impact of the global financial crisis on Australia's building and construction activity and the flow-on effects on the SECA market.

Customs and Border Protection will continue to consider the impact of this factor and other issues during the course of the investigation and will not assign injury caused by other factors to dumping.

16.2. Preliminary Conclusion on Causation

Customs and Border Protection is satisfied that there appear to be sufficient grounds to make a preliminary finding that dumped goods have caused material injury to the Australian industry.

17. PRELIMINARY NON-INJURIOUS PRICE ASSESSMENT

Duties may be applied where it is established that dumped imports have caused or threatened to cause injury to the Australian industry producing like goods. The level of dumping duty imposed by the Minister cannot exceed the margin of dumping, but a lesser duty may be applied if it is determined that it is sufficient to remove the injury.

The non-injurious price (NIP) provides the mechanism whereby this lesser duty provision is given effect. It is the price that would be sufficient to remove the injury caused to the Australian industry by the dumping. Anti-dumping duties are based on free-on-board (FOB) prices in the country of export. Therefore a NIP is calculated in FOB terms for the country of export.

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 unsuppressed selling price (USP). Customs and Border Protection's preferred approach to establishing a USP observes the following hierarchy:

1. industry selling prices at a time unaffected by dumping;
2. constructed industry selling prices – industry CTMS plus profit; or
3. 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.

Tech Dry advised that its prices in the 2007/08 year would not have been affected by SECA from the USA. Customs and Border Protection therefore considers the most appropriate basis for the USP, for the purpose of this PAD, is to use Tech Dry's sale price in 2007/08, adjusted to reflect the increase in the CTMS between 2007/08 and 2008/09. The NIP has been calculated by deducting from the USP, amounts for:

- importer profit;

- importer administrative, selling and general expenses;
- importer into-store costs; and
- overseas freight and marine insurance.

Customs and Border Protection compared the NIP calculated for the investigation period to weighted average ascertained export prices for the same period. Customs and Border Protection found that the NIP exceeded the export price by more than the calculated dumping margin. This means that the lesser duty rule does not come into effect.

18. RECOMMENDATION - PAD

Customs and Border Protection has received an exporter questionnaire response from BASF. That response permits a preliminary assessment that appears to show that exports of SECA from the USA in the investigation period were at dumped prices.

Customs and Border Protection considers it reasonable to expect that imports from the USA experienced a competitive advantage in terms of price as a result of dumping.

Customs and Border Protection considers that the available evidence indicates that increased competition from dumped imports has prevented the Australian industry from achieving price increases which otherwise would have occurred, and has led to lost sales volume.

Customs and Border Protection has calculated a NIP and found it to be above export prices from the USA. This further supports a preliminary finding that exported SECA has caused injury.

Based on the available information as at 19 November 2009, Customs and Border Protection is of the preliminary view that:

- the goods have been exported from the USA at less than their normal value;
- there is an Australian industry producing like goods that is experiencing injury;
- the dumped goods are causing material injury to the Australian industry;
- it is necessary to require and take securities to prevent material injury to the Australian industry occurring while the investigation continues; and
- there appear to be sufficient grounds for the publication of a dumping duty notice in respect of the goods exported from the USA.

Customs and Border Protection recommends that the CEO be satisfied that there appear to be sufficient grounds for the publication of a dumping duty notice in respect of the goods, and that the CEO make a preliminary affirmative determination under section 269TD to that effect.

19. RECOMMENDATION - PROVISIONAL MEASURES

In order to prevent material injury occurring while the investigation continues, Customs and Border Protection recommends that securities be taken under s. 42 in respect of interim dumping duty that may become payable in relation to SECA exported to Australia from the USA. Securities will be required on the goods that are entered for home consumption on a date to be determined if the recommendations contained in this report are accepted.

Customs and Border Protection compared weighted average export prices to weighted average normal values. Using this information, Customs and Border Protection calculated a preliminary dumping margin in the range of 80% to 90%.

The amount of dumping security required is confidential.

Details of the provisional measures are at **Confidential Appendix 4**.

20. ATTACHMENTS

| | |
|--------------------------------|---|
| Non-confidential Appendix 1 | Public notice in relation to making a PAD |
| Confidential Appendix 1 | Determination by the CEO |
| Confidential Appendix 2 | Industry and market analysis |
| Confidential Appendix 3 | Preliminary export price and normal value |
| Confidential Appendix 4 | Provisional measures |