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The Director - Investigations 4
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

Dumping investigation into concrete undelay film from Malaysia

Dear Director,

This submission is made on behalf of LCM General Products Pty Ltd trading as Cromford Film (Cromford), to the current dumping investigation into concrete underlay film exported from Malaysia (Investigation 554).

Cromford notes that the Commissioner of the Anti-Dumping Commission (the Commissioner) is able to make a preliminary affirmative determination (PAD) by 13 September 2020 at the earliest, and in doing so, require the taking of securities (provisional measures) in respect of interim dumping duties that may become payable.

The purpose and intent of the provisional measures is to provide relief to the Australian industry represented by Cromford as quickly as possible, and for the duration of the investigation where circumstances are warranted. As highlighted in its application, Cromford continues to face pressure from imports to retain existing supply contracts and achieve unsuppressed selling prices.

The Commission's Dumping and Subsidy Manual sets out its policy and practice with regards to the relevant information to be considered in deciding whether to impose provisional measures. The Manual makes clear that information provided by exporters and importers need not be verified in having regard to the making of a PAD. The Commission makes clear that:

at day 60, whilst information in submissions is unlikely to have been verified, the available information from the cooperating exporters may provide more reliable information than the normal value and export price information submitted in the industry's application.

The Commission's file note¹ to the current investigation identifies that six exporters had indicated their willingness to cooperate with the investigation and extensions had been granted to each of the exporters. Cromford notes that missing from the list of potential cooperating exporters are some large exporters that are known to have supplied the subject goods to the Australian market during the investigation period. This includes:

- Cyclepoly Sdn Bhd
- GT-Max Plastic Industries
- CY Intertrade SDN. BHD
- Respack Manufacturing Sdn Bhd

The decision of the exporters listed above to not cooperate with the investigation must be treated as an acceptance that they were indeed exporting at dumped prices during the investigation period. The lack of cooperation may also be related to an unwillingness by those exporters to confirm whether they had exported concrete underlay film that was not compliant with the Australian Standards.

Therefore, the investigation clearly has two categories of known exporters, being those that intend to cooperate and those that have decided against providing the Commission with necessary information to make the required recommendations and determinations. In considering and deciding whether a PAD and provisional measures are justified, these two categories of exporters must not be treated equally.

To do so would go against the accepted principle that the facts available provision outlined in subsection 269TAC(6) of the *Customs Act 1901*, serves to incentivise cooperation. This was accepted by the Appellate Body in *US – Hot-Rolled Steel*²:

Paragraph 7 of Annex II indicates that a lack of 'cooperation' by an interested party may, by virtue of the use made of facts available, lead to a result that is 'less favourable' to the interested party than would have been the case had that interested party cooperated.

Therefore, Cromford requests the Commissioner to take into account the lack of cooperation by known Malaysian exporters in deciding whether a PAD and provisional measures are warranted. The Commissioner is urged to have regard to the estimated export prices, normal values and dumping margins outlined in Cromford's application in imposing a provisional measure. In doing so, Cromford requests that the combination form of duties be implemented to prevent the non-cooperative exporters and their importers from absorbing the interim dumping duties whilst the investigation is underway.

In Cromford's view, the lack of cooperation by significant Malaysian exporters provides sufficient grounds for the publication of a dumping duty notice at this stage of the investigation. Cromford therefore contends that provisional measures must be imposed on all exports of concrete underlay film from Malaysia, except for those six identified exporters that have indicated their willingness to cooperate.

For the six cooperating exporters, Cromford accepts that it may be preferable to have regard to information contained within their completed questionnaire responses, and defer the taking of securities against their exports, until such time as a more accurate dumping assessment can be completed. In the event that any of the six exporters fail to meet their

¹ EPR 554, Record no. 4.

² Appellate Body Report, WT/DS184/AB/R, para 99, page 37.

extended deadlines, fail to provide a response that can be easily rectified, or fail to rectify notified deficiencies within a reasonable timeframe, Cromford requests that the PAD be amended so that provisional measures be taken against the relevant exporter's imports.

Yours sincerely

John Bracic