



Australian Government
**Department of Industry, Science,
Energy and Resources**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

**STATEMENT OF ESSENTIAL FACTS
NO. 554**

**ALLEGED DUMPING OF CONCRETE UNDERLAY FILM
EXPORTED FROM MALAYSIA**

27 September 2021

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ABBREVIATIONS

\$	Australian dollars
ABF	Australian Border Force
The Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
The applicant	LCM General Products Pty Ltd, trading as Cromford Film (Cromford)
CFR	Cost and freight
CON 554	<i>Consideration Report No. 554</i>
COGS	Cost of goods sold
the commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Cromford	LCM General Products Pty Ltd, trading as Cromford Film
CTM	Cost to make
CTMS	Cost to make & sell
CTS	Cost to sell
EBIT	Earnings before interest and tax
EPR	electronic public record
FOB	Free On Board
GAAP	Generally accepted accounting principles
GCI	Great Cosmo Industries Sdn Bhd
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
Irox	Irox (M) Sdn Bhd
L&L Trading	L&L Trading Sdn Bhd
the Manual	<i>Dumping & Subsidy Manual</i>
MCC	model control code
the Minister	the Minister for Industry, Science and Technology
NIP	Non-injurious Price
OCOT	ordinary course of trade
PAD	Preliminary Affirmative Determination
Plastik V	Plastik V Sdn Bhd
REQ	response to the exporter questionnaire
SEF	Statement of Essential Facts
SG&A	selling, general and administration
Unistar	Unistar Industries Sdn Bhd
USP	Unsuppressed Selling Price

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This statement of essential facts (SEF) No. 554 has been prepared in response to an application from LCM General Products Pty Ltd, trading as Cromford Film (Cromford). The application seeks the publication of a dumping duty notice in respect of certain concrete underlay film (the goods) exported to Australia from Malaysia.

Cromford alleges that the Australian industry has suffered material injury as a result of dumped imports of the goods, exported to Australia from Malaysia.

The Commissioner has found that, during the investigation period, the goods exported to Australia from Malaysian exporters were at dumped prices.

The Commissioner has also found that dumped exports from Malaysia have caused material injury to the Australian industry for like goods.

Based on these preliminary findings and subject to any further submissions received in response to this SEF, the Commissioner proposes to recommend that the Minister for Industry, Science and Technology (the Minister) publish a dumping duty notice in respect of all exports of the goods from Malaysian exporters.

1.2 Authority to make decision

Division 2 of Part XVB of *Customs Act 1901* (the Act)¹ describes, among other things, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application under section 269TB(1).

1.2.1 Application

On 25 May 2020, Cromford lodged an application alleging that the Australian industry has experienced material injury due to concrete underlay film exported to Australia from Malaysia at dumped prices.

Having considered the application and further information that Cromford provided, the then Commissioner decided not to reject the application. On 15 July 2020, the then Commissioner initiated an investigation into the alleged dumping of the goods from Malaysia.

Consideration Report 554 (CON 554) and Anti-Dumping Notice (ADN) No. 2020/073 provide further details relating to the initiation of the investigation.²

¹ All legislative references in this report are to the *Customs Act 1901* unless otherwise specified.

² Electronic public record (EPR) 554, Item No. 2 and 3.

1.3 Preliminary findings and conclusions

The Commissioner’s preliminary findings and conclusions in this SEF are based on available information at this stage of the investigation. A summary is below and there is greater detail in the remainder of this report.

1.3.1 The goods and like goods (Chapter 3)

The Commissioner considers that the Australian industry produces certain concrete underlay film ‘like’ to the goods the subject of the application.

1.3.2 Australian industry (Chapter 4)

The Commissioner is satisfied that there is an Australian industry producing like goods.

1.3.3 Australian market (Chapter 5)

The primary sources of supply for the Australian market for the goods are imports from Malaysia and Cromford (the Australian industry).

1.3.4 Dumping assessment (Chapter 6)

The commission’s assessment of the dumping margins is set out in Table 1 below.

Exporter	Dumping margin
Great Cosmo Industries Sdn Bhd (Great Cosmo)	17.2%
L&L Trading Enterprise Sdn Bhd (L&L Trading)	23.2%
Unistar Industries Sdn Bhd (Unistar)	17.6%
Plastik V Sdn Bhd (Plastik V)	17.7%
JL Plastic Industries Sdn Bhd (JLP)	22.1%
All other exporters	30.9%

Table 1 - Preliminary dumping margins

1.3.5 Economic condition of the Australian industry (Chapter 7)

The Commissioner is preliminarily satisfied that the Australian industry has experienced injury in the form of:

- reduced sales volume
- reduced market share
- price suppression
- price depression
- reduced profit and profitability
- reduced revenue
- reduced return on investment (ROI).

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1.3.6 Has dumping caused material injury? (Chapter 8)

The Commissioner has preliminarily found that dumped exports of the goods from Malaysia caused material injury to the Australian industry.

1.3.7 Whether dumping may continue? (Chapter 9)

The commission is preliminarily satisfied that dumping may continue in relation Malaysian exports of the goods.

1.3.8 Non-injurious price (Chapter 10)

The commission has calculated that the non-injurious price (NIP) is lower than the normal value ascertained for all exporters from Malaysia.

The Commissioner proposes to recommend that the Minister have regard to the desirability of the lesser duty rule.

1.3.9 Proposed measures (Chapter 11)

The Commissioner proposes to recommend to the Minister that anti-dumping measures (in the form of a dumping duty notice) be imposed on imports of the goods from Malaysia, using the *ad valorem* method.

The effective rate of duty, taking into account the operation of the NIP, is below.

Country	Exporter	Effective rate of duty	Duty method
Malaysia	Great Cosmo	14.2%	<i>Ad valorem</i>
	L&L Trading	22.8%	
	Unistar	16.4%	
	Plastik V	11.4%	
	JLP	20.1%	
	All other exporters	23.5%	

Table 2 - Interim dumping duty rates

1.3.10 Preliminary affirmative determination (Chapter 12)

Pursuant to section 269TD(1)(a), the Commissioner is satisfied that there now appears to be sufficient grounds for the publication of a dumping duty notice in respect of the goods exported to Australia from Malaysia.

As a result, the Commissioner has made a PAD, pursuant to section 269TD. Securities will be taken in relation to interim dumping duty (IDD) that may become payable for imports of the goods from the subject exporters that are entered for home consumption from 28 September 2021 onwards.

2 BACKGROUND

2.1 Initiation

On 25 May 2020, Cromford lodged an application with the Commissioner under section 269TB(1) seeking the publication of a dumping duty notice in respect of the goods exported to Australia from Malaysia.

On 4 June 2020 and 10 June 2020, Cromford provided further information in support of the application under section 269TC(2A) of the Act.

Having considered the application, the Commissioner decided not to reject the application and initiated Investigation 554 on 15 July 2020. Public notification of the initiation was also made on 15 July 2020.

Consideration Report 554 (CON 554) and Anti-Dumping Notice (ADN) No. 2020/073 provide further details relating to the initiation of the investigation and are available on the Anti-Dumping Commission (the commission) website, www.adcommission.gov.au.³

In respect of this investigation:

- The investigation period for the purpose of assessing dumping is 1 July 2019 to 30 June 2020.
- The injury analysis period for the purpose of determining whether exports of dumped goods has caused material injury to the Australian industry is from 1 March 2017.

2.2 Conduct of the investigation

2.2.1 Australian industry

The Commissioner is satisfied that the applicant for the investigation represents the Australian industry producing like goods to the goods the subject of the investigation.

2.2.2 Importers

The commission identified several importers in the Australian Border Force (ABF) import database that imported the goods from Malaysia during the investigation period.

The commission forwarded importer questionnaires to key importers. The commission also placed a copy of the importer questionnaire on the commission's website for other importers to complete.

The following entities provided complete or partial questionnaire responses:

- Damvar Industries Pty Ltd
- Golden Steel International Pty Ltd (T/A Ariston Wire)

³ Electronic public record (EPR) 554, Item No. 2 and 3.

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- Tampala Pty Ltd (T/A BIY Construction Supplies)
- A.G. Pulie Pty Ltd
- Joiman Pty Ltd (T/A Fairbanks)
- Sunrise Marketing Pty Ltd
- Allcon Group Pty Ltd
- Allcraft Trading Pty Ltd

The commission conducted remote importer verifications subject to being satisfied that it had received a complete response to the importer questionnaire (including relevant attachments), in a timely manner.

Importer verification reports are available on the EPR.⁴

2.2.3 Exporters

The commission identified presumed exporters of the goods from the ABF import database and from information provided in the application.

The commission forwarded exporter questionnaires and associated spreadsheets for completion. The commission placed a copy of the questionnaire and spreadsheets on the case page (EPR) for other exporters of the goods to complete.

The commission received a response to the exporter questionnaire (REQ) from the following entities:

- Plastik V Sdn Bhd (Plastik V)
- Great Cosmo Industries Sdn Bhd (GCI)
- Unistar Industries Sdn Bhd (Unistar)
- Irox (M) Sdn Bhd (Irox)
- JL Plastic Industries Sdn Bhd (JLP)
- L&L Trading Enterprise Sdn Bhd (L&L Trading)

The commission conducted verification of the REQs. Export verification reports and file notes documenting the verification processes are available on the EPR.

The commission considers all of these entities to be exporters of the goods, with the exception of Irox, which was found to be a trader for Unistar.

Further information relevant to this assessment is outlined in chapter 6 of this report.

2.2.4 Submissions and other file notes

The commission received the following submissions from interested parties prior to the publication of this SEF. The Commissioner has considered these submissions in reaching the preliminary conclusions contained within this SEF.

⁴ EPR 554, Item No. 16 and 18.

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Public Record Item No.	Interested Party	Date published
06	LCM General Products Pty Ltd	7/09/2020
14	JL Plastic Industries Sdn Bhd	15/12/2020
17	LCM General Products Pty Ltd	3/5/2021
22	Unistar Industries Sdn Bhd	6/9/2021
26	LCM General Products Pty Ltd	8/9/2021

Table 3 - Submissions received

During the course of the investigation, the commission contacted InfraBuild⁵ in relation to its supply arrangements. This related to the assessment of Cromford's injury claims. A file note containing a non-confidential summary of the response is available on the electronic public record.⁶

2.3 Statement of essential facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as is allowed under section 269ZHI(3)⁷, place on the public record a SEF on which the Commissioner proposes to base a recommendation to the Minister in relation to the application.⁸

In formulating the SEF, the Commissioner must have regard to the application and any submissions concerning publication of the notice that the Commissioner receives within 37 days after the date of initiation of the investigation.⁹ The Commissioner may also have regard to any other matters considered relevant.¹⁰

The SEF was originally due on the public record on or before 2 November 2020. The commission obtained multiple extensions of time for the due date for the SEF and final report.¹¹ The Commissioner is now required to place the SEF on the public record on or before 27 September 2021.

2.4 Preliminary affirmative determination

In accordance with section 269TD, the Commissioner may make a preliminary affirmative determination (PAD) if satisfied that:

⁵ The commission contacted representatives of InfraBuild in relation to the supply agreements of GFG Alliance companies (InfraBuild Construction Solutions and the Australian Reinforcing Company).

⁶ EPR 554, Item No. 19.

⁷ On 14 January 2017, the powers and functions of the Minister under section 269ZHI were delegated to the Commissioner. Refer to ADN No. 2017/10 for further information.

⁸ Section 269TDAA(1).

⁹ Section 269TDAA(2)(a).

¹⁰ Section 269TDAA(2)(b).

¹¹ EPR 554, Item No. 11: ADN No. 2020/123, Item No. 15: ADN No. 2021/025, and Item No. 27: ADN 2021/113.

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- there appears to be sufficient grounds for the publication of a dumping duty or a countervailing duty notice or
- it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation of the goods into Australia.

A PAD may be made no earlier than day 60 of the investigation.

The Commonwealth may require and take securities at the time a PAD is made or at any time during the investigation after a PAD has been made, if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

Where a PAD is not made 60 days after initiation of the investigation, the *Customs (Preliminary Affirmative Determinations) Direction 2015* (PAD Direction) directs the Commissioner to publish a status report providing reasons why a PAD was not made.

On 14 September 2020, the then Commissioner published a status report.¹² The then Commissioner was not satisfied at that stage of the investigation, that there appeared to be sufficient grounds for the publication of a dumping duty notice.

The PAD Direction also requires the Commissioner to reconsider making a PAD after the publication of a status report, at least once prior to the publication of the SEF.

For the reasons set out in this SEF, the Commissioner is now satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice in relation to the goods exported to Australia from Malaysia.

The Commissioner considers that the Commonwealth should take securities under section 42 of the Act in respect of interim dumping duty that may become payable in relation to the goods exported to Australia from Malaysia.

The Commissioner is satisfied that securities are necessary to prevent material injury to the Australian industry occurring while the investigation continues. Chapter 12 outlines further information regarding the PAD.

Securities will apply to imports of the like goods from Malaysia entered for home consumption on or after **28 September 2021**.

2.5 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base the final recommendations to the Minister. This SEF represents an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note that the SEF may not represent the final views of the Commissioner.

¹² EPR 554, Item No. 7: ADN 2020/104.

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Interested parties have 20 days to respond to the SEF. The Commissioner will consider these responses in making its final report to the Minister. The report will recommend whether or not a dumping duty notice should be published, and the extent of any interim duties that are, or should be, payable.

The Commissioner should receive responses to this SEF no later than **17 October 2021**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister.

The Commissioner must report to the Minister by 22 November 2021.

Submissions should preferably be via email to: investigations4@adcommission.gov.au

Director Investigations 4
Anti-Dumping commission
GPO Box 2013
Canberra ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the Public Record. A guide for making submissions is available on the commission's web site.

The Public Record contains non-confidential submissions from interested parties, the non-confidential versions of the commission's visit reports and other publicly available documents.

Documents on the Public Record should be read in conjunction with this SEF.

2.6 Report to the Minister

The Commissioner's final report and recommendations in relation to this investigation must be provided to the Minister on or before 22 November 2021. This is unless the investigation is terminated earlier, or a further extension of time to provide the final report is granted.

3 THE GOODS AND LIKE GOODS

3.1 Preliminary finding

The commissioner is satisfied that locally manufactured black concrete underlay film (also marketed as builder's film) is 'like goods' to the goods under consideration.

3.2 Legislative framework

Section 269TC(1) of the Act requires that the Commissioner must reject an application for a dumping duty notice if the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner must firstly determine that the goods the Australian industry produces are 'like' to the imported goods. Section 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.

An Australian industry can apply for relief from injury caused by dumped or subsidised imports, even if the goods it produces are not identical to those imported. The industry must, however, produce goods that are 'like' to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

- physical likeness
- commercial likeness
- functional likeness
- production likeness.

3.3 The goods

The goods the subject of the application (the goods) are:

Black concrete underlay film (also marketed as builders' film), manufactured from either recycled and/or virgin resins, with a thickness ranging between 150-230 microns, and a width from 2-6 metres.¹³

¹³ EPR 554, Item No. 3: ADN 2020/073.

3.4 Tariff classification

ADN 2020/073 described that the goods are generally, but not exclusively, classified to the following tariff classification in Schedule 3 to the *Customs Tariff Act 1995*:

- 3920.10.00 (statistical codes 25, 40 and 41).

From the verification of exporter and importer data, the commission observed that imports of the goods within the investigation period were also declared under other statistical codes within tariff classification 3920.10.00 (e.g. statistical code 20, 21, 22 and 51). In addition, imports of the goods were declared under tariff classification 3921.90.90 (statistical code 16).

Tariff classifications and statistical codes listed include goods that are both subject and not subject to this investigation. The listing of these tariff classifications and statistical codes is for convenience (or reference) only and does not form part of the goods description.

Please refer to the goods description at section 3.3 for authoritative detail regarding the goods, the subject of this investigation.

3.5 Like goods

The following outlines the commission's assessment of whether the locally produced black concrete underlay film (builder's film) are identical to, or closely resemble, the goods under consideration and are therefore 'like goods'.

3.5.1 Physical likeness

The commission found that the locally produced goods and imported goods are physically alike. The imported and locally produced goods are black polyethylene film, with a thickness ranging between 150-230 microns, and a width from 2-6 metres.

3.5.2 Production likeness

The commission found the production process for the locally produced goods and the imported goods to be alike. The imported and locally produced goods are manufactured from either recycled and/or virgin resins. The goods are produced via the same primary manufacturing process (blown film extrusion) and to similar specifications (e.g. impact resistance/thickness).

3.5.3 Commercial likeness

The commission found that the locally produced goods and imported goods are commercially alike. The imported and locally produced goods compete directly in the same market sector, are interchangeable, and use similar distribution channels. This was demonstrated as the imported and locally produced goods competed directly for existing supply agreements.

3.5.4 Functional likeness

The commission found that the locally produced goods and imported goods are functionally alike, as they have similar end uses (and are interchangeable).

3.5.5 Conclusion – Like goods assessment

The Commissioner is satisfied that the Australian industry produces ‘like goods’ to the goods under consideration, as defined in section 269T of the Act.

3.5.6 Other polyethylene films / builder’s film Cromford produced

In its application, Cromford claimed that its sales of orange concrete underlay film (builder’s film) of 200 microns and 300 microns thickness were also like goods.¹⁴ This was notwithstanding that imports of coloured film (e.g. orange film) were not included in the description of the goods subject to the application.

From the industry verification,¹⁵ the commission found that Cromford manufactures polyethylene film to a range of specifications and of various colours. Further information about other builder’s film that Cromford produced and other products in the Australian market is outlined in chapter 5 of this report.

The commission assessed Cromford’s production and sales of orange film and observed that:

- the primary physical difference to the goods under consideration is the colour – which required different raw material inputs in production (masterbatch and resin)
- Cromford’s orange film may also have different physical specifications to the goods under consideration (e.g. 300 microns thickness)
- Cromford’s orange film has commercial differences to the goods under consideration.

Specifically, the commission found that the Australian market for orange film is supplied through imports from Malaysia, as well as goods the Australian industry produced.

Verified cost and sales data demonstrated that black concrete underlay film is the most economical product in the Australian market. Orange underlay film of equivalent specifications is sold at a premium in the market, due to increased raw materials costs incurred in the production of orange film.

Information from interested parties indicates that orange film is targeted to specific markets based on customer preferences. For example, black concrete underlay film is prevalent in all markets, except South Australia and Northern Territory, with orange concrete underlay film being more prevalent in those particular markets.

¹⁴ EPR 554, Item No. 1.

¹⁵ EPR 554, Item No. 20.

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'Super orange' (300 micron) film appears to be acknowledged as a premium product, which Cromford described as being used for certain high end builds.

The commission understands that black and orange film are not sold in direct competition in the Australian market due to the differences in costs and market preferences.

For example, it was apparent that Cromford's production of orange film competed directly for supply agreements with imports of orange film. However, it was not apparent that Cromford's orange film competed with imports of black film. Additionally, Cromford did not provide any information to indicate that its sales of orange film competed with imports of black film.¹⁶

The commission's assessment

The commission notes that Cromford's application for a dumping investigation specifically concerns imports of black concrete underlay film. As outlined above, the commission found certain physical, production and commercial differences between these products and Cromford's production and sales of orange film. It was apparent that only Cromford's sales of black film competed with imports of the subject goods during the investigation period.

In this context, the commission does not consider Cromford's orange film to be 'like goods' to the goods under consideration. The commission also does not consider Cromford's other films of colours or specifications beyond the scope of the goods under consideration, to be 'like goods'.

The commission has assessed the market size (chapter 5) and Cromford's injury claims (chapter 7 and chapter 8), having regard solely to sales of black concrete underlay film.

3.6 Model control codes

The commission has used a model control code (MCC) structure in order to identify key characteristics for, among other things, model matching when comparing export prices and normal values (the basis for using a MCC structure and the commission's practice is explained in ADN No. 2019/132). All interested parties participating in this inquiry were requested to provide sales and cost data in accordance with the MCC structure detailed in the table below:

¹⁶ Ibid.

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	Category	Sub-category	Identifier	Sales data	Cost data
1	Impact resistance	Medium	M	Mandatory	Mandatory
		High	H		
2	Actual Thickness	150 – 179 microns	A1	Mandatory	Mandatory
		180 – 230 microns	A2		
3	Nominal Thickness	150 – 179 microns	N1	Mandatory	Optional
		180 – 230 microns	N2		

Table 4 - MCC Categories

Any changes to the proposed MCC structure, or alterations in terms of its application in respect of each interested party, have been addressed in the relevant verification reports and file notes available on the public record for this investigation.

3.6.1 Amendment to MCC categories

From the verification of interested parties’ data, the commission identified the need for an additional MCC subcategory for ‘Impact Resistance’.

Category	Sub-Category	Identifier
Impact Resistance	Other – Construction / Industrial grade	O
	Medium	M
	High	H

Table 5 - Amendments to MCC categories: Impact resistance

The commission observed price differences for the goods exported to Australia according to the ‘impact resistance’. However, not all goods exported to Australia or sold domestically in Malaysia were tested and marketed according to the impact resistance of the goods. As such, an additional MCC subcategory has been added for these products (Other – Construction / Industrial grade).

3.6.2 Verification of MCC categories

Interested parties reported cost and sales information having regard to the MCC categories.

In some cases, the commission identified exporter specific amendments to the MCC categories reported for costs, based on the verified cost data for the goods. These amendments are outlined in the exporter verification reports and file notes.

4 THE AUSTRALIAN INDUSTRY

4.1 Preliminary finding

The Commissioner is satisfied that there is an Australian industry, consisting primarily of Cromford, producing like goods, and that the like goods are wholly manufactured in Australia.

4.2 Legislative framework

The Commissioner must be satisfied that the 'like' goods are in fact produced in Australia. Sections 269T(2) and 269T(3) of the Act 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.

4.3 Australian industry

In its application, Cromford identified itself as the major Australian manufacturer of like goods. Cromford stated that it also had sales of like goods that an unrelated Australian entity produced. The volume of these traded goods, however, was modest in comparison with Cromford's own production.

Cromford represented that, aside from its operations, the key source of supply for the Australian market is imports of the goods from Malaysia.

The commission contacted the Australian entity that had sales of black concrete underlay film to Cromford. This entity provided a response, with relevant production and sales information.

The commission confirmed that the Australian entity manufactured the like goods, for sale to Cromford. The entity identified Cromford as being its only customer for concrete underlay film during the investigation period. The entity also described the goods were not part of its primary commercial operations and that, following the investigation period, it has ceased to manufacture concrete underlay film.

Based on the information provided, the commission considers this entity is no longer an Australian manufacturer of like goods.

Cromford identified a number of local entities that it understood have the capability to manufacture builder's film (including like goods). Cromford stated that none of these entities had a presence in the Australian market during the investigation period. Cromford described that it understood these entities would manufacture builder's film only on a very irregular basis (i.e. from scrap produced from other products).

Upon initiation of Investigation 554, the commission contacted these entities, but did not receive a response.

The commission has not received any information to indicate that another local manufacturer had a significant presence in the Australian market during the investigation period.

4.3.1 Claims received in respect of the Australian industry

During importer verifications, the commission received claims from interested parties that Cromford may have imported the goods.¹⁷ It was also highlighted that Cromford's resale volumes were unclear.¹⁸

The commission examined Cromford's cost and sales data and was satisfied that Cromford's purchase volumes of traded goods were identifiable, separately to its own production.¹⁹

Cromford's production and resale volumes are segregated at section 7.3.1 of this report. This demonstrates that Cromford's own production accounted for the vast majority of its sales.

Additionally, from the information assessed, the commission is satisfied that Cromford did not import the goods during the period examined.

4.3.2 Assessment – Australian industry

The commission is satisfied that Cromford is the primary Australian manufacturer of like goods.

Cromford also formerly sourced like goods from an Australian manufacturer that has since ceased manufacturing builder's film.

The commission understands that other local entities may have the capability to manufacture builder's film. However, the commission did not receive information to confirm that these entities had sales of like goods during the investigation period.

4.4 Production process

Cromford's manufacturing facilities are located in Pendle Hill, NSW, where it manufactures plastic film products, including black concrete underlay film. The commission conducted a site tour of Cromford's manufacturing facilities and is satisfied that the goods are wholly produced at this facility.

Concrete underlay film is produced via a blown film extrusion process and wound onto cardboard cores for distribution.

The primary production process for the goods is:

- Raw materials (e.g. black masterbatch and low density polyethylene [LDPE] resin) are input through feeders into a blending unit and fed into an extruder.

¹⁷ EPR 554, Item No. 16 and 18.

¹⁸ EPR 554, Item No. 16, p. 19.

¹⁹ EPR 554, Item No. 20.

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- Materials are annealed through a circular die and extruded vertically to form an air bubble. The dimensions of the air bubble controls for different specifications e.g. thickness.
- The air bubble is collapsed onto a cooling tower and flattened into polyethylene film.
- Samples are tested for quality assurance. Products that are marketed for compliance with the Australian standards are branded, subject to passing impact resistance and thickness testing.
- The film is wound onto a cardboard core, and cut according to the desired length.

4.5 Preliminary assessment

Based on the information detailed above and in chapter 3, the commission is satisfied that:

- black concrete underlay film (builder's film) that Cromford manufactured is like to the goods²⁰
- the like goods were wholly manufactured in Australia ²¹
- there is an Australian industry, consisting primarily of Cromford, which produces like goods in Australia.²²

²⁰ Section 269T(1).

²¹ Section 269T(2).

²² Section 269T(4).

5 AUSTRALIAN MARKET

5.1 Preliminary finding

The Commissioner has found that the Australian market for certain concrete underlay film (builder's film) is supplied through imports from Malaysia, the Australian industry, and to a lesser extent, imports from a number of other countries.

Imports from Malaysia, as a percentage of the total Australian import volume of the goods, were above negligible levels.

5.2 Background

Concrete underlay film is a commodity product and customers are readily able to change supplier. Importers, distributors and end users may source from multiple suppliers.

The Australian market is primarily composed of Malaysian exporters, traders and importers of the goods from Malaysia, while the Australian industry maintains a less significant market presence.

Imports of the goods from all other countries in the investigation period and injury analysis period accounted for an insignificant total volume.

The analysis of the Australian market detailed in this chapter is based on verified information from Cromford, import data from the ABF import database, and verified importer and exporter information.

5.3 Market structure

5.3.1 Market segmentation and end uses

The Australian market for certain concrete underlay film (the goods) primarily involves the goods being used as a moisture barrier (vapour barrier/damp-proof membrane) for concrete slab underlay.

The goods are also marketed for a range of general use applications such as for asbestos removal applications, silage protection, gardening, home repairs, storage wrapping, and general floor protection from dust, paint, light debris etc. For example, it was represented that builder's film sold in smaller rolls for the handyman market would typically be used for general purpose applications.²³

Concrete underlay film complying with the Australian Standard (AS 2870) requires a falling dart impact test,²⁴ and a nominal film thickness of 0.2mm (or 200 microns).²⁵ Additionally, the National Construction Code (NCC) requires vapour barriers (medium

²³ EPR 554, Item No. 18.

²⁴ AS/NZS 4347.6.

²⁵ AS/NZS 4347.9.

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impact) and damp-proofing membranes (high impact film) to be branded continuously 'AS 2870 Concrete underlay', 0.2mm, and medium or high impact resistance (as applicable).

Market segmentation may occur due to different requirements of building standards (in different states) when the goods are used as concrete slab underlay.

For example, markets in Western Australia, Victoria, Tasmania and Queensland have a requirement for medium impact film of 200 microns nominal thickness for concrete slab underlay. In contrast, the NSW market has a requirement for high impact film, of 200 microns nominal thickness.

The South Australian market also has a requirement for high impact film of nominal thickness of 200 micron for concrete slab underlay. However, orange concrete underlay film is predominantly used in that market, which is not within the scope of the goods under consideration for this investigation.

5.3.2 Marketing and distribution

Marketing

Concrete underlay film is generally marketed under a number of generic names, such as 'builder's film', 'polyethylene film', or 'handy rolls', and branded for compliance with AS 2870.

The goods are sold in rolls and according to the nominal thickness, with the most common dimensions being 4m x 200micron x 50m. However, the goods may be produced and sold to a range of dimensions (i.e. to different widths and lengths).

As described at section 5.3.1 above, the goods are generally marketed according to two grades, medium impact and high impact resistance, in accordance with the Australian Standard.

AS2870 requires a minimum impact resistance and thickness, for goods that are used as concrete underlay film. However, the goods under consideration specifically includes builder's film that could not meet the Australian Standard. For instance, the standard requires a nominal thickness of 200 microns and an average actual thickness of at least 180 microns. This differs from the goods under consideration, which includes black builder's film with a thickness ranging between 150 to 230 microns.

In its application, Cromford set out that concrete underlay film is typically branded to comply with Australian Standards, although it is not uncommon for some imported film to be unbranded. In Cromford's opinion, non-compliant underlay film may be marketed and sold as a direct substitute in the Australian market for compliant products. Therefore the scope of the subject goods was designed to capture these allegedly non-compliant products as well.²⁶

The commission notes that the goods may be marketed under generic names (e.g. builder's film) and for a range of end uses (as set out at section 5.3.1). Typical general

²⁶ EPR 554, Item No. 1, p. 10.

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use applications do not require branding or testing for compliance with AS2870. The commission cannot clearly distinguish between all imports of the goods based on the branding. Additionally, given that the goods are typically sold through distributors, it is also not possible for the commission to confirm the particular end use of goods in the market. As a result, the commission has not made any conclusions in relation to Cromford's claims of non-compliance in the Australian market.

Distribution

Cromford typically sells the goods to distributors, who resell to end users (e.g. concreters/builders).

Exporters were found to typically supply the goods to Australian importers, who on-sold the goods to distributors/wholesalers, or to a lesser extent to hardware stores. Exporters may also sell directly to distributors or large retailers.

The commission understands that the Australian market is not very channelized, with no significant barriers to entry.

Based on the information examined, the commission found that Cromford typically competes directly with importers or with exporting manufacturers for supply agreements to resellers of the goods. Resellers are spread throughout the hardware, building and reinforcing industries.

5.3.3 Other builder's film in the Australian market

From the verification of Australian industry, importer and exporters sales data, the commission identified that other types of polyethylene builder's film are also present in the Australian market.

Cromford described that polyethylene film manufactured through blown film extrusion is typically between 50 microns and 300 microns. Polyethylene film is manufactured for various end uses, such as industrial packaging, agricultural applications, as well as for use as concrete underlay film. Besides black polyethylene film, Cromford's other polyethylene film products include orange and clear (natural) film.

Malaysian exporters also made Australian sales of polyethylene builder's film beyond the scope of the goods under consideration. This includes black polyethylene builder's film of different thicknesses (including thicknesses lower than 150 microns) and coloured builder's films (typically orange builder's film and clear builder's film).

Information from the applicant and interested parties indicates that black and orange builder's film of thicknesses of 200 microns and above are typically branded for use as concrete underlay in the Australian market.

However, as set out at section 3.5.6, it was not apparent that Cromford's sales of black underlay film competed with other builder's film, outside of the scope of the goods under consideration.

For this reason, the commission's assessment of the Australian market and Cromford's injury claims is based solely on sales of black film within the scope of the goods under consideration.

5.3.4 Supply

Cromford typically undertakes all raw material storage, raw material processing, finished goods processing and warehousing/despatch from its factory in Pendle Hill, Sydney. Cromford has also used warehouse space at its parent company (Martogg factories) at Dandenong VIC and Carole Park QLD for the purpose of supplying customers.

Importers of the goods were found to typically service certain regions, or for larger importers, to operate several distribution centres, to service different locations.

Importers may be at a competitive advantage for supply to regional areas further away from Cromford's primary sales destinations of NSW, VIC and metropolitan QLD. This is due to potentially lower freight costs compared with Cromford.

5.3.5 Demand

Activity in the building and construction industry determines demand for concrete underlay film. Variation in demand may result from seasonal fluctuations for the Christmas and New Year period and reduced demand in the Easter period. Weather conditions, such as high rainfall may also lead to a short-term reduction in demand, as it reduces the ability to pour and lay concrete slabs.

5.4 Pricing

5.4.1 Cromford

Cromford represented that it negotiates pricing based on general market factors. Prices to customers are set according to price lists, which take into account freight costs and a margin.

Cromford represented that, prices would generally be revised due to changes in raw materials or freight costs. However, Cromford described that prices were reduced during the most recent period in an attempt to match import offers.

Cromford provided, in its application, details of a tender that GFG Alliance companies called and awarded in the investigation period for a multiple-year supply arrangement. Cromford provided tender documentation in relation to these negotiations to confirm that it had reduced prices in an attempt to win the tender. Cromford described that in this instance, it was unable to match import offers, as they were considerably below prices that it could offer. Details of the tender are set out in section 8.9.

5.4.2 Pricing in the Australian market

Malaysian exporters and importers of the goods are the most significant market players,²⁷ such that Cromford is not considered to be a price setter.

²⁷ EPR 554, Item No. 1 and 18.

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The commission understands that a number of factors affect market prices, including exchange rates, ocean freight, and raw material costs (e.g. LDPE).

There is significant price competition in the market, due to various Malaysian suppliers. This includes entities that did not participate in the investigation.

Based on the information assessed, the commission understands Malaysian suppliers compete for market share and operate on slim margins. Importers may source from multiple suppliers, with price the main driver for competition between Malaysian suppliers.

5.5 Market size

In Consideration Report No. 554 (CON 554), the commission estimated the Australian market size for the goods using the best available information at the time of initiation. This consisted of sales data that Cromford provided for its sales as well as ABF import data.

The commission has revised its estimate of the size of the Australian market. The assessment relies on Cromford's verified sales data, export data obtained from the ABF import database and verified data obtained from cooperating exporters and importers. The commission's estimate is in Figure 1 below. The assessment each year is for the period from July-June. The Australian industry volumes include like goods that Cromford produced and resale volumes.

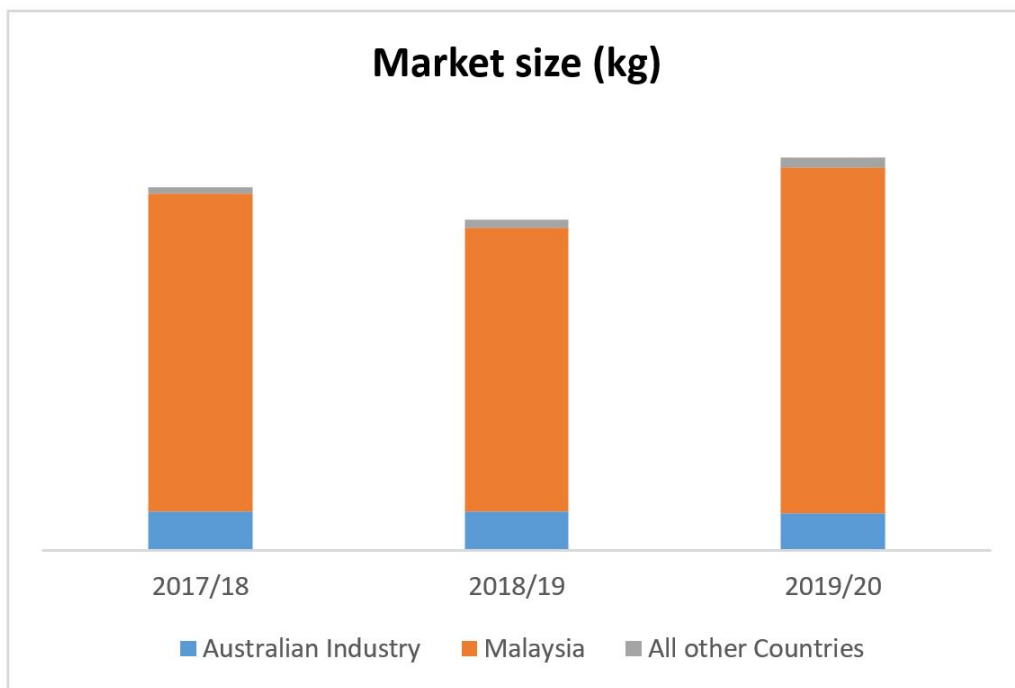


Figure 1 - Australian market size

The commission's assessment of the size of the Australian market is at **Confidential Attachment 1**.

6 DUMPING INVESTIGATION

6.1 Preliminary finding

The commission has found that the goods exported to Australia from Malaysia were dumped.

The commission’s assessment of the dumping margins in relation to concrete underlay film exported to Australia from Malaysia during the investigation period is summarised below.

Exporter	Dumping margin
GCI	17.2%
L&L Trading	23.2%
Plastik V	17.7%
Unistar	17.6%
JLP	22.1%
All other exporters	30.9%

Table 6 - Preliminary dumping margins

6.2 Legislative and Policy Framework

In the report to the Minister under section 269TEA(1), the Commissioner must recommend whether the Minister ought to be satisfied as to the grounds for publishing a dumping duty notice under section 269TG.

Under section 269TG, one of the matters the Minister must be satisfied of in order to publish a dumping duty notice is that the goods have been dumped.

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC, respectively.

6.2.1 Dumping margin

Dumping margins are determined under section 269TACB. For all dumping margins calculated for the purposes of this investigation, the commission compared the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period, in accordance with section 269TACB(2)(a).

6.2.2 Export price

The export price is determined in accordance with section 269TAB, taking into account whether the purchases or sales of goods are ‘arms length’ transactions under section 269TAA.

Section 269TAB(1)(a) provides that, subject to certain conditions, the export price of any goods exported to Australia is the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of the transport of the

goods or any other matter arising after exportation. Where the conditions in section 269TAB(1)(a) are not met, such as when the export transactions are not 'arms length' or the importer(s) have not purchased the goods from the exporter, the export price is determined under sections 269TAB(1)(b) or (c).

Section 269TAB(3) provides that, where the export price cannot be established under the preceding provisions, the export price is determined having regard to all relevant information.

6.2.3 Normal value

Goods sold in the ordinary course of trade

Section 269TAC(1) provides that, subject to certain conditions, the normal value of the goods is the price at which like goods are sold in the domestic market of the country of export. However, section 269TAC(1) may not be used to calculate the normal value of the goods if one of the circumstances in sections 269TAC(2)(a) or (b) is present. Where one or more of these circumstances are present, the normal value of the goods is to be calculated under either section 269TAC(2)(c) or (d).

Low volume of domestic sales

Section 269TAC(2)(a)(i) provides that the normal value of goods exported to Australia cannot be ascertained under section 269TAC(1) where there is an absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under section 269TAC(1). Relevant sales are sales of like goods sold for home consumption that are 'arms length' transactions and sold in the OCOT.

Domestic sales of like goods are taken to be in a low volume where the total volume of like goods is less than 5% of the total volume of the goods under consideration that are exported to Australia (unless the Minister is satisfied that the volume is still large enough to permit a proper comparison).

Where the normal value cannot be determined under section 269TAC(1), the Minister may determine a price through either a constructed normal value under section 269TAC(2)(c) or may direct that section 269TAC(2)(d) applies and use prices of like goods exported to a third country.

The Dumping and Subsidy Manual provides that, in practice, the commission's preference is to use the costs based method in the first instance when the cost data is available.²⁸

Constructed normal value

Section 269TAC(2)(c) provides for the normal value to be a constructed – being the sum of:

- the cost of production or manufacture of the goods in the country of export and

²⁸ Dumping and Subsidy Manual (November 2018), p. 51.

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- on the assumption that the goods had been sold for home consumption in the ordinary course of trade (OCOT) in the country of export instead of being exported, such amounts as the Minister determines would be the selling, general and administrative (SG&A) costs and the profit on that sale.

Other relevant provisions

Section 269TAC(6) provides that, where the normal value cannot be established under sections 269TAC(1), 269TAC(2)(c), 269TAC(2)(d) or 269TAC(4) the normal value is determined having regard to all relevant information.

6.3 Exporters

6.3.1 Exporter questionnaires

The commission received a REQ from the following entities:

- Plastik V Sdn Bhd (Plastik V)
- Great Cosmo Industries Sdn Bhd (GCI)
- Unistar Industries Sdn Bhd (Unistar)
- Irox (M) Sdn Bhd (Irox)
- JL Plastic Industries Sdn Bhd (JLP)
- L&L Trading Enterprise Sdn Bhd (L&L Trading)

6.3.2 Cooperative exporters

Section 269T(1) provides that, in relation to a dumping investigation, an exporter is a 'cooperative exporter' where the exporter's exports were examined as part of the investigation and the exporter was not an 'uncooperative exporter'.

The commission considers all entities listed above in section 6.3.1 who provided a REQ and whose exports were examined as part of the investigation, to be cooperative exporters, with the exception of Irox, which was found to be a trader for Unistar (refer below).

6.3.3 Trading entities

The commission generally identifies the exporter as a principal in the transaction, located in the country of export from where the goods were shipped, that:

- gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or its own vehicle for delivery to Australia or
- owns, or previously owned, the goods, but need not be the owner at the time the goods were shipped.²⁹

²⁹ Dumping and Subsidy Manual (November 2018), p. 29.

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It is common for traders or other intermediaries to play a role in the exportation of the goods.³⁰ These parties will typically provide services such as arranging transportation (both land and ocean), arranging port services, arranging loading, conducting price negotiations, arranging contracts with producer and customer alike, conveying the customer's specifications to the producer including quality, marking, and packing requirements, and so forth.³¹

Typically the manufacturer, as a principal who knowingly sent the goods for export to any destination will be the exporter.

The commission has determined that the REQ received from Irox was from an entity that was not an exporter of the goods during the investigation period, but that instead acted as an intermediary. Further details are set out within section 6.4.3 of this report.

6.3.4 Uncooperative exporters

Section 269T(1) provides that an exporter is an 'uncooperative exporter', if the Commissioner is satisfied that:

- an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable or
- an exporter significantly impeded the investigation.

The Commissioner must determine an exporter to be an uncooperative exporter, on the basis that no relevant information was provided in a reasonable period, if that exporter fails to provide a response, or fails to request a longer period to do so within the legislated period.³²

The Commissioner considered the Customs Direction and determined that any exporter which did not do any of the following is an uncooperative exporter for the purposes of this investigation:

- provide a REQ to the commission
- request a longer period to provide a response within the legislated period or
- address requests for further information where REQs were given to the commission.

Accordingly, all Malaysian exporters of the goods that did not provide a REQ to the commission are considered to be uncooperative exporters, pursuant to section 269T(1).

³⁰ Ibid.

³¹ Ibid.

³² Section 8 of the Customs (Extensions of Time and Non-cooperation) Direction 2015 (the Customs Direction).

6.4 Dumping assessment

6.4.1 Great Cosmo Industries Sdn Bhd (GCI)

Verification

The commission conducted a remote verification of GCI's REQ.³³

The commission is satisfied that GCI is the manufacturer and exporter of the goods. The commission is further satisfied that GCI's information is complete, accurate and relevant, for the purpose of ascertaining the variable factors applicable to its exports of the goods.

Export price

The commission considers GCI to be the exporter of the goods that it supplied to Australian customers during the investigation period, as GCI is:

- the principal located in Malaysia, the country of export
- the manufacturer of the goods
- named on the commercial invoice as the supplier
- named as consignor on the bill of lading
- responsible for arranging and paying for inland transport to the port of export
- responsible for arranging and paying for port handling charges at the port of export
- responsible for arranging and paying for ocean freight and marine insurance (where applicable).

GCI supplied Australian customers both directly and indirectly, through an unrelated trading entity located in Malaysia.

For exports that occurred through a trading entity, GCI is considered to be the principal in these transactions. GCI was responsible for manufacturing the goods to Australian customer specifications and for arranging packing and transport to the port for export to Australia. As such, the commission is satisfied that GCI is the exporter for those transactions.

In respect of GCI's exports of the goods to Australia during the investigation period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.³⁴

³³ EPR 554, Item No. 25.

³⁴ Section 269TAA refers.

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The commission therefore considers that GCI's export sales to Australia during the investigation period were 'arms length' transactions.

For export sales made direct to Australian customers, the commission has ascertained the export price under section 269TAB(1)(a), as the price the importer paid to the exporter less transport and other costs arising after exportation.

For export sales that involved a Malaysian-based intermediary, the commission found that importer(s) did not purchase the goods from the exporter. Therefore, export prices cannot be determined under sections 269TAB(1)(a) or 269TAB(1)(b).

For these transactions, the commission ascertained the export price under section 269TAB(1)(c), having regard to all the circumstances of the exportation.

Specifically, the commission ascertained the export price for these sales based on the invoice price between GCI and the unrelated Malaysian-based intermediary on FOB terms.

Normal value

The commission found that all GCI's domestic sales of like goods for home consumption during the investigation period were to unrelated customers. In respect of these sales, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.³⁵

The commission therefore considers that GCI's domestic sales of like goods for home consumption were 'arms length' transactions.

As detailed in the GCI verification report,³⁶ the commission assessed the total volume of relevant sales of like goods as a percentage of the goods exported to Australia and found that the volume of sales was less than 5%.

The commission considers this volume is not large enough to permit a proper comparison for the purposes of determining a normal value under section 269TAC(1), as:

- the total volume of sales is well below 5%
- there was not a material volume of sales for domestic consumption in all quarters during the relevant period

³⁵ Section 269TAA refers.

³⁶ EPR 554, Item No. 25.

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- there were differences in models for domestic sales and goods exported to Australia
- insufficient information is available to make specification adjustments for differences in sales in accordance with section 269TAC(8).

Therefore, the commission ascertained the normal value under section 269TAC(2)(c), using the sum of:

- the cost to make the exported goods based on the company's records in accordance with section 43(2) of the Regulation³⁷
- SG&A on the assumption that the goods, instead of being exported, were sold for home consumption in the OCOT in the country of export based on the company's records in accordance with section 44(2) of the Regulation
- an amount for profit based on data relating to the production and sale of like goods on the domestic market in the OCOT in accordance with section 45(2) of the Regulation.

Adjustments

The commission is satisfied there is sufficient information to justify the following adjustments in accordance with section 269TAC(9). The commission considers these adjustments to be necessary to ensure a fair comparison of normal values and export prices.

Adjustment Type	Deduction/addition
Export inland transport	Add an amount for export inland transport
Export handling & port charges	Add an amount for handling & port charges

Table 7 - Summary of adjustments - GCI

Dumping margin

The dumping margin for GCI's exports to Australia in the investigation period is **17.2%**.

The commission's dumping margin calculations for GCI are set out at **Confidential Attachments 2 to 5**.

6.4.2 L&L Trading Enterprise Sdn Bhd (L&L Trading)

The commission conducted a remote verification of L&L Trading's REQ.³⁸

The commission is satisfied that L&L Trading is the manufacturer and exporter of the goods. The commission is further satisfied that L&L Trading's information is complete, relevant and accurate, for the purpose of ascertaining the variable factors applicable to its exports of the goods.

³⁷ The Customs (International Obligations) Regulation 2015 (the Regulation).

³⁸ EPR 554, Item No. 23.

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Export price

The commission considers L&L Trading to be the exporter of the goods that it supplied to Australian customers during the investigation period, as L&L Trading is:

- the principal located in Malaysia, the country of export
- the manufacturer of the goods
- named on the commercial invoice as the supplier
- responsible for arranging and paying for inland transport to the port of export
- responsible for arranging and paying for port handling charges at the port of export
- responsible for arranging and paying for ocean freight (where applicable).

In respect of L&L Trading's exports of the goods to Australia during the investigation period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.

The commission therefore considers that L&L Trading's export sales to Australia during the investigation period were 'arms length' transactions.

The commission ascertained an export price for L&L Trading under section 269TAB(1)(a), as the price the importer paid to the exporter less transport and other costs arising after exportation.

Normal value

The commission found that all of L&L Trading's domestic sales of like goods for home consumption during the investigation period were to unrelated customers. In respect of these sales, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.³⁹

The commission therefore considers that L&L Trading's domestic sales of like goods for home consumption were 'arms length' transactions.

³⁹ Section 269TAA refers.

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As detailed in L&L Trading's verification report,⁴⁰ the commission assessed the total volume of relevant sales of like goods as a percentage of the goods exported to Australia and found that the volume of sales was less than 5%.

The commission considers this volume is not large enough to permit a proper comparison for the purposes of determining a normal value under section 269TAC(1), as:

- the total volume of sales is well below 5%
- there was not a material volume of sales for domestic consumption in all quarters during the relevant period
- there were differences in models for domestic sales and goods exported to Australia and
- insufficient information is available to make specification adjustments for differences in sales in accordance with section 269TAC(8).

Therefore, the commission ascertained the normal value under section 269TAC(2)(c), using the sum of:

- the cost to make of the exported goods based on the company's records in accordance with section 43(2) of the Regulation
- domestic SG&A on the assumption that the goods, instead of being exported, were sold domestically based on the company's records in accordance with section 44(2) of the Regulation
- an amount for profit based on data relating to the production and sale of like goods on the domestic market in the OCOT in accordance with section 45(2) of the Regulation.

Adjustments

The commission is satisfied there is sufficient information to justify the following adjustments in accordance with section 269TAC(9). The commission considers these adjustments to be necessary to ensure a fair comparison of normal values and export prices.

Adjustment Type	Deduction/addition
Export packaging	Add an amount for export packaging cost
Export handling	Add an amount for export handling charges
Export inland transport charges	Add an amount for export inland transport charges
Other export expenses	Add an amount for other export expenses
Export credit costs	Add an amount for export credit charges

Table 8 - Summary of adjustments - L&L Trading Enterprise Sdn Bhd

Dumping margin

⁴⁰ EPR 554, Item No. 23.

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The dumping margin for L&L Trading's exports to Australia in the investigation period is **23.2%**.

The commission's dumping margin calculations for L&L Trading are set out at **Confidential Attachments 6 to 9**.

6.4.3 Unistar Industries Sdn Bhd (Unistar)

Verification

The commission conducted a remote verification of the REQ that Unistar and its related trading entity Irox provided.⁴¹

The commission is satisfied that Unistar is the manufacturer and exporter of the goods. The commission is further satisfied that Unistar's information is complete, accurate and relevant, for the purpose of ascertaining the variable factors applicable to its exports of the goods.

Export price

Unistar supplied the goods to Australian customers via two channels. Unistar exported directly to Australian importers and indirectly through its related trading entity Irox.

The commission considers Unistar to be the exporter of the goods that it supplied to Australian customers during the investigation period, as Unistar is:

- the principal located in Malaysia, the country of export
- the manufacturer of the goods, and produces the goods to Australian customer requirements, knowing that they are destined for export to Australia
- responsible for arranging and paying for inland transport to the port of export
- responsible for arranging and paying for port handling charges at the port of export
- responsible for arranging and paying for ocean freight (where applicable).⁴²

For exports that occurred through its related trading entity Irox, Unistar is considered to be the principal in these transactions, whereas Irox's essential role was as an intermediary.

For those transactions, Unistar was responsible for manufacturing the goods to Australian customer requirements, arranging packing, inland transportation, port services, and export shipping of the goods to Australia. As such, the commission is satisfied that Unistar was the principal located in the country of export who knowingly placed the goods

⁴¹ EPR 554, Item No. 21.

⁴² The commission generally identifies the exporter as a principal in the transaction, located in the country of export from where the goods were shipped, that gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or its own vehicle for delivery to Australia; or a principal in the transaction, located in the country of export, that owns, or previously owned, the goods but need not be the owner at the time the goods were shipped.

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in the hands of a logistics company for delivery to Australia, and therefore the exporter of the goods.

In respect of Unistar's exports of the goods to Australia during the investigation period that occurred direct to Australia customers, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.⁴³

The commission therefore considers that Unistar's export sales of the goods made directly to Australian customers were 'arms length' transactions.

For these transactions, the commission ascertained the export price under section 269TAB(1)(a), as the price the importer paid to the exporter less transport and other costs arising after exportation.

For exports that occurred through related trading entity Irox, importers did not purchase the goods from the exporter, and therefore, export prices cannot be determined under sections 269TAB(1)(a) or 269TAB(1)(b).

For these sales, the commission ascertained an export price under section 269TAB(1)(c), having regard to all the circumstances of the exportation.

Specifically, the commission ascertained an export price under section 269TAB(1)(c), having regard to the FOB price that Unistar received, being the price that Irox paid, less transport and other costs arising after exportation.

For these transactions, the commission found the selling price between Irox and Unistar to be representative of selling prices from Irox to unrelated Australian importers in 'arms length' transactions, net any selling expenses that Irox incurred in relation to the sales of the goods.

Normal value

The commission found that all of Unistar's domestic sales of like goods for home consumption during the investigation period were to unrelated customers. In respect of these sales, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller

⁴³ Section 269TAA refers.

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- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.⁴⁴

The commission therefore considers that Unistar's domestic sales of like goods for home consumption were 'arms length' transactions.

As detailed in the Unistar verification report,⁴⁵ the commission assessed the total volume of relevant sales of like goods as a percentage of the goods exported to Australia and found that the volume of sales was less than 5%.

The commission considers this volume is not large enough to permit a proper comparison for the purposes of determining a normal value under section 269TAC(1), as:

- the total volume of sales is well below 5%
- there was not a material volume of sales for domestic consumption in all quarters during the relevant period
- there were differences in models for domestic sales and goods exported to Australia
- insufficient information is available to make specification adjustments for differences in sales in accordance with section 269TAC(8).

Therefore, the commission ascertained the normal value under section 269TAC(2)(c), using the sum of:

- the cost to make of the exported goods based on the company's records in accordance with section 43(2) of the Regulation
- domestic SG&A, on the assumption that the goods, instead of being exported, were sold domestically based on the company's records, in accordance with section 44(2) of the Regulation
- an amount for profit based on data relating to the production and sale of like goods on the domestic market in the OCOT, in accordance with section 45(2) of the Regulation.

Submission in relation to Unistar's domestic sales

In response to the verification file note, Unistar claimed that an amount for profit cannot be ascertained under section 45(2) of the Regulation, as it alleges that the three domestic sales were not in the OCOT.⁴⁶

Amongst its reasons, Unistar claimed that:

- the sales are one-off transactions to customers that did not use the goods for construction purposes

⁴⁴ Section 269TAA refers.

⁴⁵ EPR 554, Item No. 21.

⁴⁶ EPR 554, Item No. 22.

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- the sales are of builder's film that comply to the Australian standard (AS2870), which is not required for the Malaysian market
- builder's film produced to the Australian standards is more expensive than construction film which Malaysian construction companies use
- the sales have a very short lead time.

The commission's assessment

The commission considers that the three transactions are domestic sales of like goods, of equivalent grades to the exports to Australia, and are relevant to the assessment of an amount for profit.

Additionally, in relation to the points raised, the commission does not accept that the circumstances of the domestic sales preclude them from being in the OCOT. Relevant to this assessment, the commission considers that:

- the sales were to unrelated parties
- the end use of the products does not necessarily have a bearing on the relevance of the sales, as builder's film may be used for a variety of purposes
- the commercial terms of the sales do not appear to be unusual or out of the ordinary.

The commission notes that the goods exported to Australia may be used for a range of different end uses, including general use applications, consistent with the domestic sales.

Also, the commission does not consider that transactions being of low volume, in and of itself, means that sales are not made in the OCOT. The sales appear to have all the indicia of a routine commercial domestic sale transaction in the country of origin.

Accordingly, the commission considers that the sales are relevant to ascertain an amount for profit under section 45(2) of the Regulation.

Adjustments

The commission is satisfied there is sufficient information to justify the following adjustments in accordance with section 269TAC(9). The commission considers these adjustments to be necessary to ensure a fair comparison of normal values and export prices.

Adjustment Type	Deduction/addition
Export Inland transport charges	Add an amount for inland transport charges
Export port handling and other costs	Add an amount for export handling and other charges
Export credit costs	Add an amount for export credit charges

Table 9 - Summary of adjustments - Unistar

Dumping margin

The dumping margin for Unistar's exports to Australia in the investigation period is **17.6%**.

The commission's dumping margin calculations are set out at **Confidential Attachments 10 to 13**.

6.4.4 Plastik V Sdn Bhd (Plastik V)

Verification

The commission conducted a remote verification of Plastik V's REQ.⁴⁷

The commission is satisfied that Plastik V is the producer of the goods. The commission is further satisfied that Plastik V's information is complete, accurate and relevant, for the purpose of ascertaining the variable factors applicable to its exports of the goods.

Export price

The commission considers Plastik V to be the exporter of the goods that it supplied to Australian customers during the investigation period, as Plastik V is:

- the principal located in Malaysia, the country of export
- the manufacturer of the goods
- named on the commercial invoice as the supplier
- responsible for arranging and paying for inland transport to the port of export
- responsible for arranging and paying for port handling charges at the port of export
- responsible for arranging and paying for ocean freight and insurance (where applicable).

In respect of Plastik V's Australian exports of the goods during the period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.

The commission therefore considers Plastik V's export sales to Australia during the investigation period were 'arms length' transactions.

The commission ascertained an export price for Plastik V under section 269TAB(1)(a), as the price the importer paid to the exporter less transport and other costs arising after exportation.

⁴⁷ EPR 554, Item No. 24.

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Normal value

The commission found that Plastik V did not have any domestic sales of like goods during the investigation period.

Therefore the commission considered whether the normal value could be ascertained under 269TAC(1), having regard to the sales of other sellers of like goods.

The commission assessed the total volume of relevant sales of like goods by other sellers as a percentage of the goods exported to Australia and found that the volume of sales was less than 5%.

The commission considers this volume is not large enough to permit a proper comparison for the purposes of determining a normal value under section 269TAC(1), as:

- sales by other sellers were of low volume
- there was not a material volume of sales for domestic consumption in all quarters during the relevant period
- there were differences in models for domestic sales by other sellers and goods that Plastik V exported to Australia
- insufficient information is available to make specification adjustments for differences in sales in accordance with section 269TAC(8).

Therefore, the commission ascertained the normal value under section 269TAC(2)(c), using the sum of:

- the cost to make of the exported goods based on the company's records in accordance with section 43(2) of the Regulation
- an amount for SG&A in accordance with section 44(3)(c) of the Regulation, having regard to Plastik V's indirect SG&A costs as a percentage of revenue for all sales and applying this proportion to calculate the SG&A, based on the sales revenue and quantity of the goods exported to Australia
- an amount for profit based on the weighted average of the amounts realised by other exporters or producers from the sale of like goods in accordance with section 45(3)(b) of the Regulation.

For SG&A, it is noted that Plastik V had domestic sales of other products during the period. However, Plastik V's SG&A related to both domestic and export sales and was not segregated by product type. Additionally, the commission did not have relevant information to assess Plastik V's production costs applicable to goods of the same general category that were sold on the domestic market. Given this, the commission was unable to ascertain an amount for SG&A under section 44(3)(a) of the Regulation.

The commission considers that Plastik V's indirect SG&A costs reported were relevant equally to both domestic and export sales, while reflecting those expenses applicable to Plastik V, based on its commercial operations. As such, the commission considers Plastik V's SG&A costs to be relevant for the purpose of ascertaining an amount for SG&A under section 44(3)(c) of the Regulation.

For an amount for profit, the commission was likewise unable to ascertain profit under section 45(3)(a) of the Regulation, due to limitations in the data available for domestic

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sales. However, the commission considers other sellers data to be suitable to ascertain an amount for profit under section 44(3)(b) of the Regulation.

Adjustments

The commission is satisfied there is sufficient information to justify the following adjustments in accordance with section 269TAC(9). The commission considers these adjustments to be necessary to ensure a fair comparison of normal values and export prices.

Adjustment Type	Deduction/addition
Export packaging	Add an amount for export packaging cost
Export handling	Add an amount for export handling charges
Export inland transport charges	Add an amount for export inland transport charges

Table 10 - Summary of adjustments - Plastik V Sdn Bhd

Dumping margin

The dumping margin for Plastik V's exports to Australia in the investigation period is **17.7%**.

The commission's dumping margin calculations are set out at **Confidential Attachments 14 to 17**.

6.4.5 JL Plastic Industries Sdn Bhd (JLP)

Verification

The commission conducted a remote verification of JL Plastic Industries Sdn Bhd (JLP)'s REQ.⁴⁸

The commission is satisfied that JLP is the exporter of the goods. The commission found that JLP and related party Jiao Long Enterprise (M) Sdn Bhd (Jiao Long), are involved in the production of the goods.

The verification was conducted in accordance with Anti-Dumping Notice 2016/30, which seeks to reconcile information 'upwards' to audited financial statements and 'downwards' to source documents. JLP did not provide audited financial statements or tax returns for the investigation period. The verification team therefore sought to reconcile information to the management accounts that JLP provided.

As detailed in the JLP verification report, the commission is satisfied that JLP's sales information is complete, accurate and relevant for the purpose of ascertaining the export price applicable to its exports of the goods.⁴⁹

⁴⁸ EPR 554, Item No. 28.

⁴⁹ Ibid.

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However, the commission is not satisfied that sufficient information was provided to demonstrate that JLP's cost information is complete, accurate and relevant. The commission is not satisfied the information provided is suitable to ascertain the cost of production in accordance with section 43(2) of the Regulation. As a result the commission did not rely on JLP's cost data for the purpose of ascertaining the normal value of the goods.

Export price

The commission considers JLP to be the exporter of the goods that it supplied to Australian customers during the investigation period, as JLP is:

- the principal, located in the country of export
- the manufacturer of the goods
- named on the commercial invoice as the supplier
- responsible for arranging and paying for inland transport to the port of export
- responsible for arranging and paying for port handling charges at the port of export
- responsible for arranging and paying for ocean freight and insurance (where applicable).

In respect of JLP's exports of the goods to Australia during the period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.

The commission therefore considers that JLP's export sales to Australia during the investigation period were 'arms length' transactions.

The commission ascertained an export price for JLP under section 269TAB(1)(a), as the price the importer paid to the exporter, less transport and other costs arising after exportation.

Normal value

The commission found that JLP did not have any domestic sales of like goods during the investigation period.

Therefore the commission considered whether the normal value could be ascertained under 269TAC(1), having regard to the sales of other sellers of like goods.

The commission assessed the total volume of relevant sales of like goods by other sellers as a percentage of the goods exported to Australia and found that the volume of sales was less than 5%.

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The commission considers this volume is not large enough to permit a proper comparison for the purposes of determining a normal value under section 269TAC(1), as:

- sales by other sellers were of low volume
- there was not a material volume of sales for domestic consumption in all quarters during the relevant period
- there were differences in models for domestic sales of other sellers and the goods that JLP exported to Australia
- insufficient information is available to make specification adjustments for differences in sales in accordance with section 269TAC(8).

The commission assessed whether the normal value could be determined under section 269TAC(2)(c).

The commission considers that insufficient information was provided to enable verification that JLP's cost information is complete, accurate and relevant, or suitable for the purpose of ascertaining the cost of production in accordance with section 43(2) of the Regulation.

Cost of Production

The Customs (International Obligations) Regulation 2015 (the Regulation), provides for the assessment of an exporter's cost of production to be undertaken in accordance with section 43 of the Regulation. Section 43(2) of the Regulation sets out that

lf:

(a) an exporter or producer of like goods keeps records relating to the like goods and

(b) the records:

(i) are in accordance with generally accepted accounting principles in the country of export and

(ii) reasonably reflect competitive market costs associated with the production or manufacture of like goods

the Minister must work out the amount by using the information set out in the records.

The Dumping and Subsidy Manual describes that, when considering competitive market costs, the commission will examine inputs more carefully where they are sourced from related parties, such as where a major input is produced by an associate of the exporter. In such cases, it may be reasonable for that company to cooperate with dumping inquiries.⁵⁰

⁵⁰ Dumping and Subsidy Manual (November 2018), pp. 45-6.

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From the verification of JLP's response, it was observed that:⁵¹

- JLP's production process is highly integrated with its related party supplier, Jiao Long
- Jiao Long is involved in the procurement, recycling and mixing of raw materials – which are sold to JLP at a fixed 'transfer price'
- JLP's cost to make and sell data reported was far below all other exporters of the goods.

JLP's raw material costs are not readily comparable to market prices, as raw materials are supplied in a mixed form, subject to additional conversion costs.

However, it was observed that JLP's unit raw material costs were materially below all other exporters of the goods, although other exporters incurred additional conversion costs, subsequent to the purchase of these raw materials.

In addition, the commission was unable to conduct a virtual verification of JLP's response, obtain relevant information to test the 'transfer price' reported, or to verify that JLP's cost information was complete, accurate and relevant in accordance with ADN 2016/30.⁵²

The commission notes that there were limitations in the information available for verification, due to the following factors:

- JLP did not have audited financial statements or tax returns for the investigation period or prior periods for upwards costs verification in accordance with ADN 2016/30, to confirm the completeness of the cost data reported
- JLP indicated that it was unable to participate in a virtual verification that the commission scheduled, or make finance staff available for direct correspondence, due to COVID-19 restrictions
- relevant information for Jiao Long was not made available for verification, for the purpose of assessing whether costs that JLP reported reflect competitive market costs
- JLP and Jiao Long did not provide sufficient information to confirm the reliability and completeness of the cost data reported.

Assessment of cost data

Having regard to these factors, the commission is not satisfied that sufficient information was provided for verification to demonstrate that JLP's cost information is complete, accurate and relevant. The commission is therefore not satisfied JLP's cost information is suitable to ascertain the cost of production in accordance with section 43(2) of the Regulation.

⁵¹ EPR 554, Item 28.

⁵² Ibid.

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Consequently, the commission did not consider JLP's cost data provided to be reliable, for the purpose of ascertaining the normal value. Accordingly, the commission has disregarded JLP's cost data pursuant to section 269TAC(7).

The commission has ascertained the normal value for JLP in accordance with section 269TAC(6) of the Act. The commission ascertained the normal value, using the weighted average normal value of other Malaysia exporters of the goods during the investigation period, with respect to the models that JLP exported.

Dumping margin

The dumping margin for JLP's exports to Australia in the investigation period is **22.1%**.

The commission's dumping margin calculations are set out at **Confidential Attachments 18 to 20**.

6.4.6 Uncooperative exporters

As detailed in chapter 6.3.4, the commission considers all exporters of the goods from Malaysia, other than those that provided an REQ, are uncooperative exporters for the purposes of this investigation.

Section 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters.

The commission examined the ABF import database and observed that exports from the cooperative exporters constitute a significant volume of all exports of the goods from Malaysia during the investigation period.

Accordingly, the commission considers the variable factors ascertained for the cooperative exporters to be relevant to the assessment of all other exporters.

Export price

Pursuant to section 269TACAB(1)(d), the commission determined an export price for the uncooperative exporters under section 269TAB(3), having regard to all relevant information.

The commission ascertained the export price based on the lowest ascertained export price for the cooperative exporters of the goods.

Normal value

Pursuant to section 269TACAB(1)(e), the commission determined the normal value for the uncooperative exporters under section 269TAC(6), having regard to all relevant information.

The commission ascertained the normal value based on the highest ascertained normal value for the cooperative exporters of the goods.

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Dumping margin

The dumping margin for uncooperative and all other exporters is **30.9%**.

The commission's dumping margin calculations are set out in **Confidential Attachment 21**.

6.4.7 Summary of dumping margins

The commission ascertained the following dumping margins for the goods exported to Australia from Malaysia during the investigation period:

Exporter	Dumping margin
GCI	17.2%
L&L Trading	23.2%
Plastik V	17.7%
Unistar	17.6%
JLP	22.1%
All other exporters	30.9%

Table 11 - Preliminary dumping margins

6.4.8 Volume of dumped imports

Pursuant to section 269TDA(3), the Commissioner must terminate the investigation, in so far as it relates to a country, if satisfied that the total volume of goods that have been or may be dumped is a negligible volume. Section 269TDA(4) defines a negligible volume as less than 3% of the total volume of goods imported into Australia over the investigation period, where section 269TDA(5) does not apply. Section 269TDA(5) does not apply to this investigation.

Using the ABF import database and having regard to the information collected and verified during the investigation, the commission determined the volume of imports in the Australian market.⁵³ The commission is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of goods that have been exported from Malaysia and dumped was greater than 3% of the total import volume, and is therefore not negligible.

6.4.9 Level of dumping

Section 269TDA(1) provides that the Commissioner must terminate a dumping investigation, in so far as it relates to an exporter of the goods, if satisfied that there has been no dumping by the exporter of any of those goods. Or if satisfied that there has been dumping by the exporter of some or all of those goods, but the dumping margin for the exporter is less than 2%.

The commission is satisfied that all goods from Malaysian exporters during the investigation period were dumped and the dumping margin for all Malaysia exporters of the goods is more than 2%.

⁵³ Chapter 5.5 refers.

7 ECONOMIC CONDITION OF THE INDUSTRY

7.1 Preliminary finding

Based on an analysis of the information contained in Cromford's application and information obtained during the Australian industry verification, the commission considers that the Australian industry suffered injury during the investigation period in the form of:

- reduced sales volume
- reduced market share
- price suppression
- price depression
- reduced profit and profitability
- reduced revenue
- reduced ROI.

7.2 Approach to injury analysis

Cromford is the major producer of like goods in Australia.

As discussed in section 4.3, the commission understands that a number of entities have the capability to manufacture like goods in Australia. The commission received data from an entity that sold exclusively to Cromford in low volumes and that has since ceased to manufacture the goods. Aside from this entity, the commission did not find evidence of other Australian entities that were present in the market during the investigation period.

For this reason, the commission considers that the data that Cromford provided is a suitable indicator of the performance of the entire Australian industry.

The commission assessed the Australian market and the economic condition of the Australian industry using verified data from Cromford, importers and exporters, and data sourced from the ABF import database.

The Martogg Group purchased Cromford in March 2017. Consequently, the injury analysis period for this investigation is from 1 March 2017. The commission verified Cromford's sales data for the period March 2017 to June 2020 and cost data for the period July 2017 to June 2020.⁵⁴

The figures presented have been compiled on an annual basis for years ending 30 June, or on a quarterly basis for the investigation period.

The data relied on for the commission's assessment of the Australian market and economic condition of the Australian industry is at **Confidential Attachments 1, 22, and 23**.

⁵⁴ EPR 554, Item No. 20.

7.3 Volume effects

7.3.1 Sales volume

Figure 2 below shows Cromford’s sales volumes for its own production of like goods in the Australian market since March 2017, and its sales of traded goods, sourced from a local supplier.

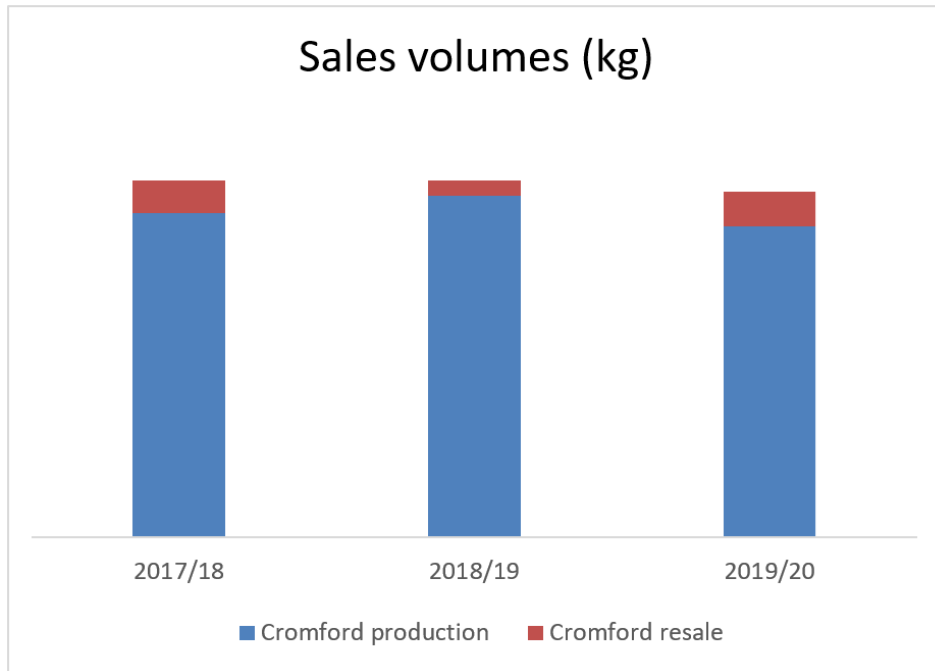


Figure 2 - Australian industry sales volumes of like goods (Investigation period)

Table 12 below shows the trend in the Australian industry’s sales volumes of like goods in the injury analysis period (total sales volumes in kg). The data is segregated to show Cromford’s sales of its own production and total sales volumes (including traded goods).

Period	2017/18	2018/19	2019/20
Cromford production	100	105	96
All sales	100	100	97

Table 12 - Index of Australian Industry Sales Volumes of Like Goods

As outlined above, Cromford’s total sales volumes of like goods were fairly consistent between 2017/18 and 2018/19, before declining in 2019/20, while the volume of traded goods fluctuated during this period.

Cromford’s sales volume of its own production of like goods increased during 2018/19, before declining during the investigation period.

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In its application, Cromford described that it increased sales volumes during the 12 month period ending 29 February 2020.⁵⁵ However, Cromford claimed lost sales volumes and reduced market share stemming from the loss of a supply agreement with GFG Alliance. The resulting contract was awarded through a competitive tender process, with Cromford describing that it experienced a reduction in sales from March 2020, as a result of loss of this supply agreement.⁵⁶

Figure 3 below shows Cromford's quarterly sales volumes of like goods during the investigation period. The data is segregated to show Cromford's sales of its own production and total sales volumes (including traded goods).

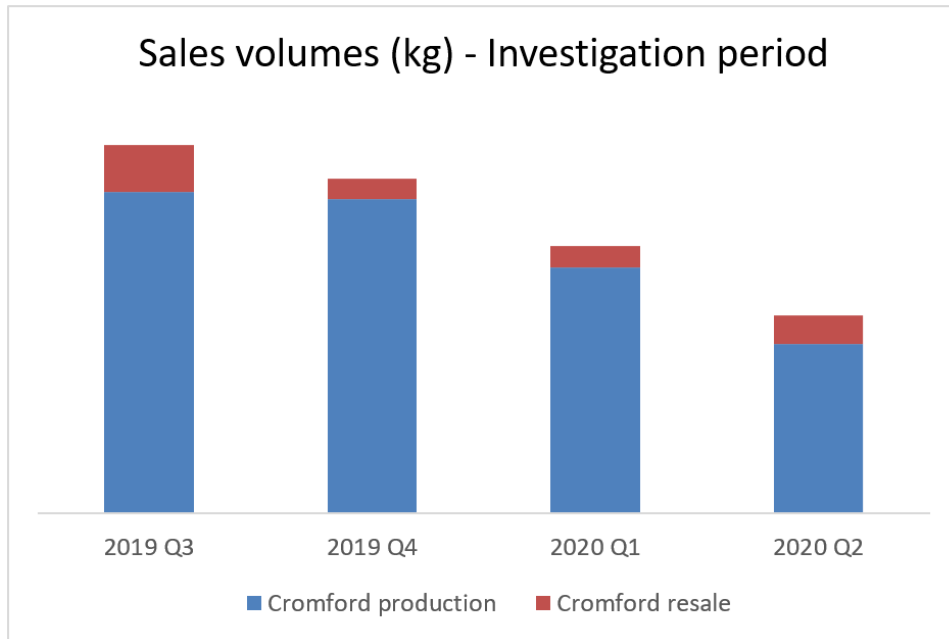


Figure 3 - Australian industry sales volumes of like goods (Investigation period)

Figure 3 evidences a significant and more pronounced decrease in Cromford's sales volumes during the investigation period, when assessed on a quarterly basis.

The commission found that Cromford experienced a significant reduction in sales volumes during the latter part of the investigation period, particularly during the June 2020 quarter, consistent with Cromford's injury claims.

7.3.2 Market share

The commission relied on verified sales data and ABF import data to estimate the market share for sales of certain black concrete underlay film during the injury analysis period.

⁵⁵ EPR 554, Item No. 1.

⁵⁶ Ibid.

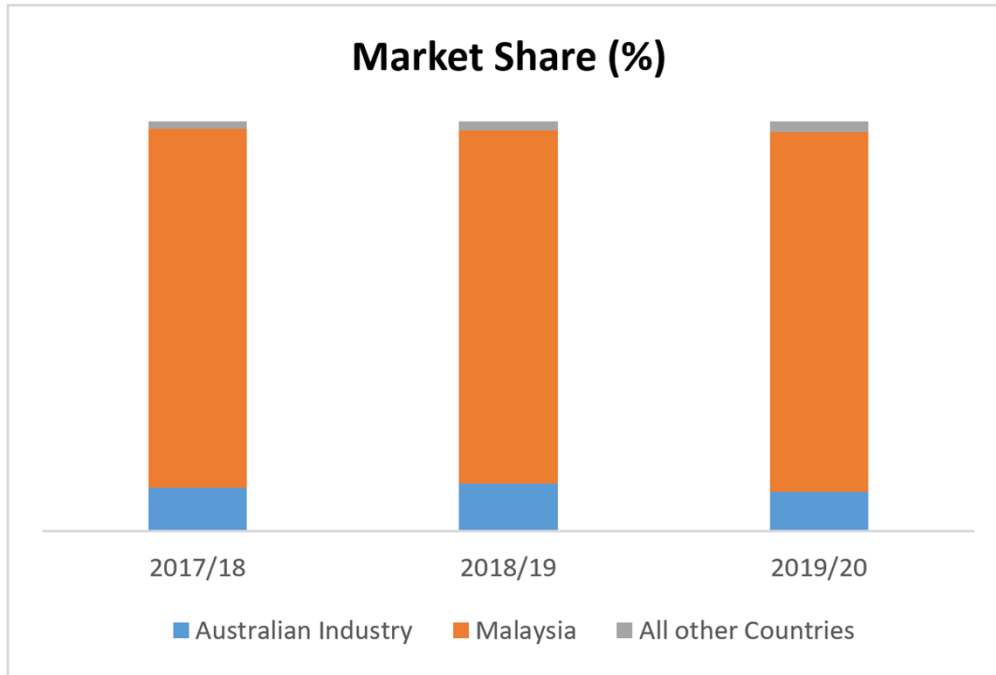


Figure 4 - Market share

For clarity, the Australian market share is also set out below:

Country of Origin	2017/18	2018/19	2019/20
Australian industry	10.6%	11.7%	9.5%
Malaysia	87.5%	86%	87.9%
All other	1.9%	2.3%	2.6%

Table 13 - Australian market share

The data indicates that imports from Malaysia accounted for a significant share of the Australian market during the injury analysis period.

After an increase in market share in 2018/19, relative to imports, Cromford’s market share declined in 2019/20, consistent with its overall decline in sales volumes.

7.3.3 Conclusion – volume effects

Having regard to the information assessed, the commission is satisfied that the Australian industry has experienced injury in the form of reduced sales volumes and market share.

7.4 Price suppression and depression

The goods are sold in rolls, with price differences per roll due to differences in specifications (e.g. impact resistance) and dimension. Therefore, to assess price effects, the commission analysed those goods sold in the highest volumes.

Sales of high and medium impact black concrete underlay film of dimensions 4m x 200microns x 50m accounted for greater than 80% of verified volumes during the investigation period. In addition, sales of high and medium impact black concrete underlay film of dimensions 2m x 200microns x 50m accounted for greater than 5% of Cromford’s verified sales volumes.

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Collectively, these products represented over 90% of Cromford's sales volumes of like goods during the investigation period.

Table 14 below shows the index of unit selling prices from 2017/18, for Cromford's verified sales of these specifications.

Product type	2017/18	2018/19	2019/20
Black Medium Impact – 4m x 200micron x 50m	100	100	97
Black High Impact – 4m x 200micron x 50m	100	100	100
Black Medium Impact – 2m x 200micron x 50m	100	101	101
Black High Impact – 2m x 200micron x 50m	100	104	98

Table 14 - Index of Cromford's Unit Selling Prices of like goods (AUD/roll)

7.4.1 Price depression

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

In relation to price depression, the variation in selling prices shown above at Table 14 indicates that Cromford's price for like goods increased for some products types in 2018/19, although prices generally decreased in 2019/20 or remained stable.

This included a decrease in selling prices for sales of black medium impact film of 4m x 200micron x 50m, which was the primary specification for the goods sold in the Australian market.

Table 14 indicates that Cromford's unit prices for black high impact 4m x 200micron x 50m concrete underlay film were stable during this period, when assessed at a weighted average across all customers. However, the commission found evidence of price depression during the investigation period when assessed at a customer basis.

For example, the Commission found evidence that Cromford had attempted to reduce prices during the investigation period in an attempt to maintain supply agreements. Specifically, this included contract and tender information assessed in relation to black high impact 4m x 200micron x 50m concrete underlay film.⁵⁷

On the basis of these observations, price depression in relation to like goods appears to have begun to occur during the investigation period.

7.4.2 Price suppression

Price suppression occurs when price increases, which otherwise would have occurred, have been prevented.

⁵⁷ Confidential Attachment 24.

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To assess whether the Australian industry experienced injury in the form of price suppression, the commission had regard to Cromford's selling prices and cost to make and sell (CTMS), in relation to goods that it produced.

Figure 5 below shows Cromford's per unit selling prices and CTMS (AUD per kg) during the period examined:

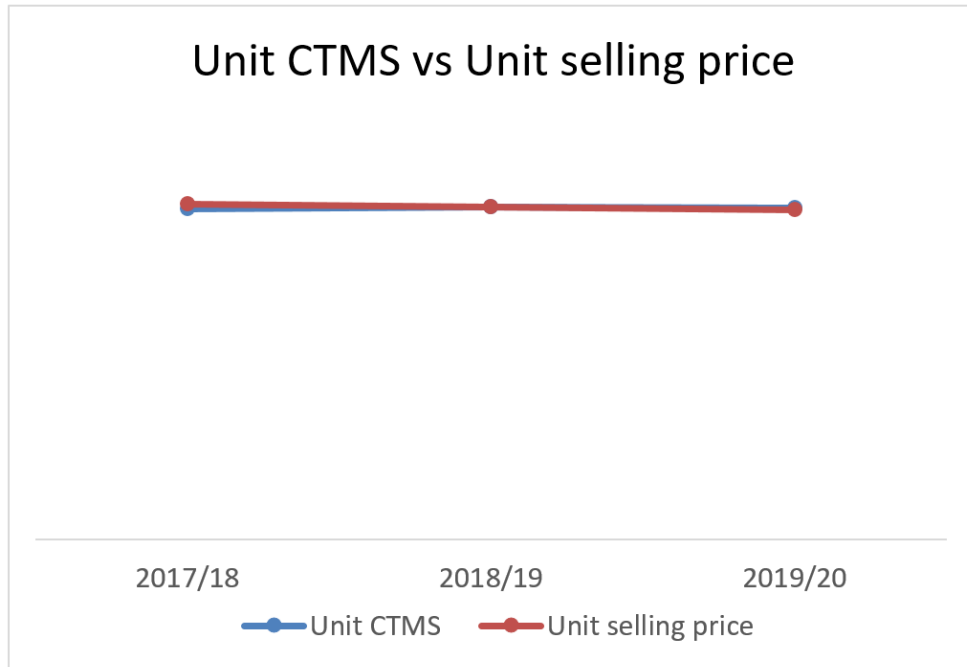


Figure 5 - Unit price and CTMS

For clarity, the index of the variation in unit CTMS and unit selling prices over the injury analysis period is also set out below.

Period	2017/18	2018/19	2019/20
Unit Selling Price – weighted average (AUD/kg)	100	99	98
Unit CTMS – weighted average (AUD/kg)	100	101	100

Table 15 - Index of Cromford's CTMS and Unit Selling Price of its own production of like goods

Having regard to the relationship between the trends in the data above, the commission observed that:

- unit CTMS increased in 2018/19, however, unit selling prices did not increase, consistent with an increase in costs
- unit CTMS exceeded unit selling prices during the investigation period.

7.4.3 Conclusion – price effects

Based on this analysis, the commission considers that Cromford has experienced injury in the form of price suppression and price depression during the period examined.

7.5 Profit and profitability

7.5.1 Like goods – profit and profitability

Figure 6 below shows the profit in AUD and profitability of Cromford’s sales of its own production of certain concrete underlay film in the Australian market since 1 July 2017.

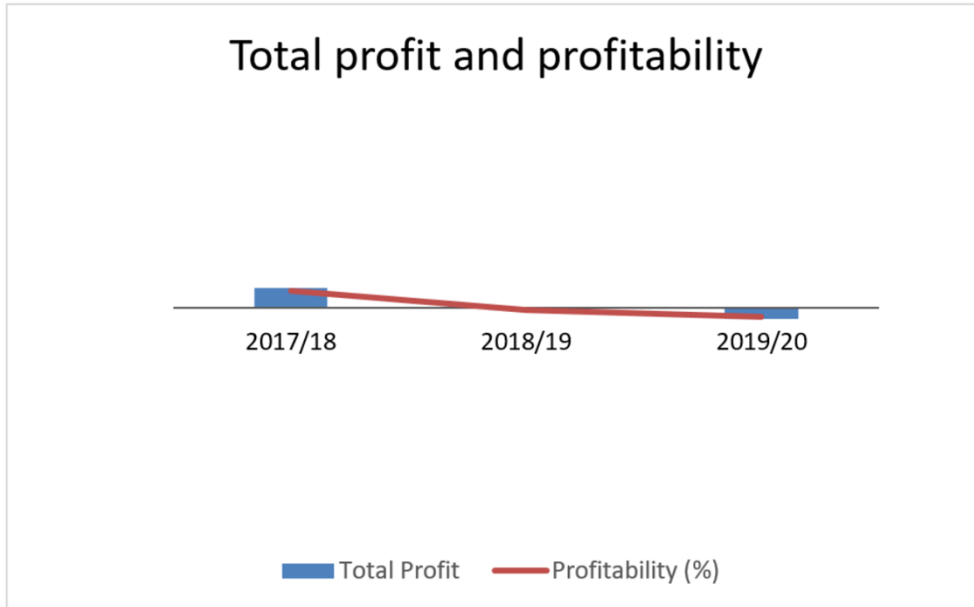


Figure 6 - Profit and profitability

Figure 6 indicates that Cromford has experienced decreasing profit and profitability across the injury examination period.

7.5.2 Conclusion – profit and profitability

Based on this analysis, the commission considers that Cromford has experienced injury in the form of reduced profit and profitability.

7.6 Other economic factors

7.6.1 Revenue

Figure 7 below shows the revenue that Cromford generated on the sale of like goods that it manufactured and sold into the Australian market during the period examined.

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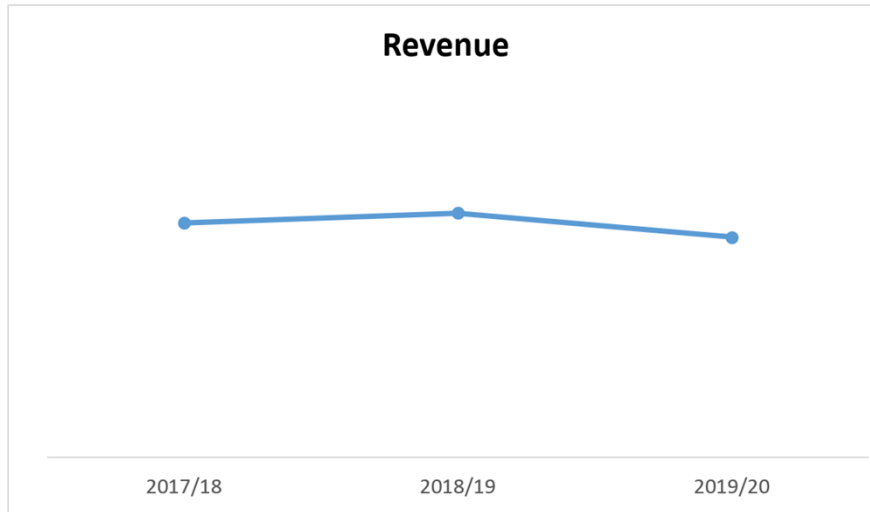


Figure 7 - Revenue

Figure 7 demonstrates that Cromford's sales of like goods that it manufactured increased in 2018/19 before decreasing in 2019/20.

7.6.2 Return on investment

Since production assets relating to Cromford's like goods are common across all plastic films or all products, working out an asset value based return on investment (ROI) for the like goods was not considered to be reliable.

Instead ROI has been calculated using the Return on Sales (ROS) approach – comparing 'Operating Profit' (EBIT) and 'Net Sales' revenue.

Figure 8 below shows return on investment (ROI), based on the return on sales method, for all sales of like goods that Cromford manufactured during the period examined.

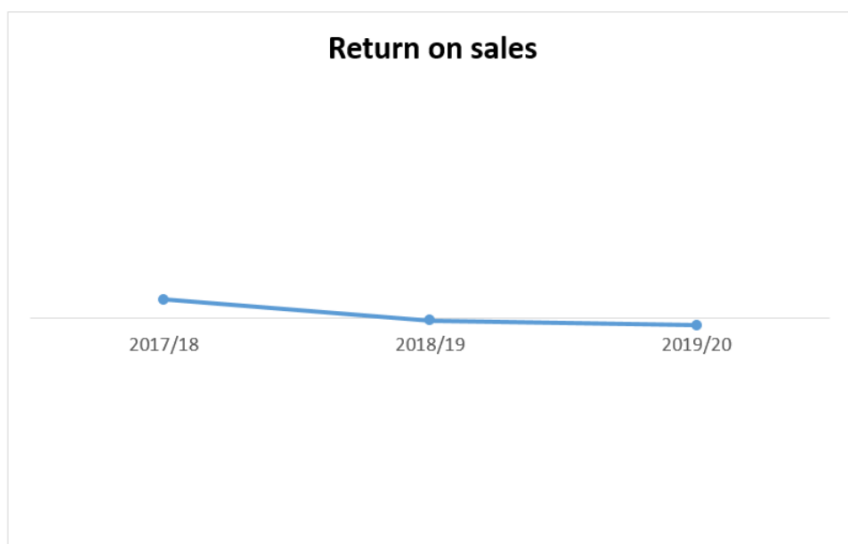


Figure 8 - Return on sales

Figure 8 demonstrates that Cromford experienced decreasing return on sales throughout the period examined.

7.6.3 Other economic factors

Cromford did not claim injury in relation to other economic factors. Based on the information assessed, the commission does not consider that Cromford has suffered injury in the form of other economic factors outlined below.

Assets

Figure 9 below shows the value of Cromford’s total company assets during the period examined.

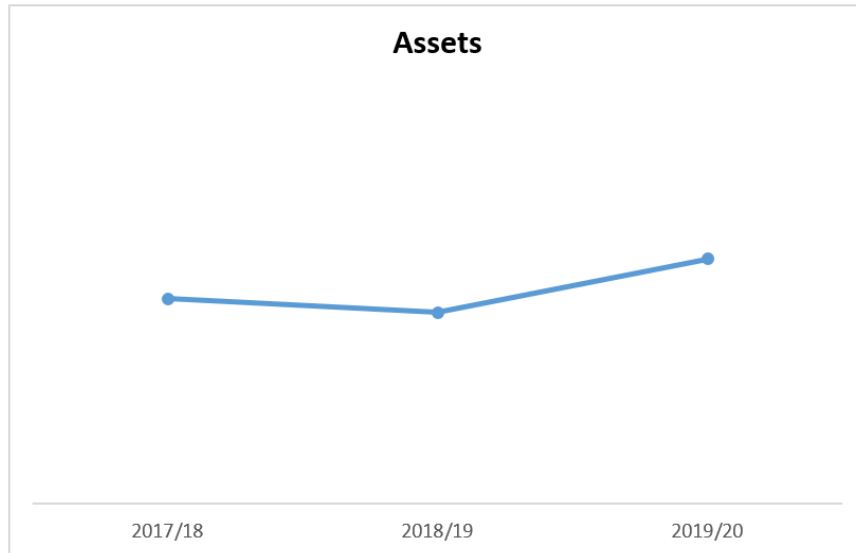


Figure 9 - Assets

As demonstrated above, Cromford’s total company assets increased during the period examined. Cromford’s change in assets during this period related to its production of like goods and other products.

Capital investment

Figure 10 below shows the value of capital investment that Cromford undertook in relation to its total production during the period examined.

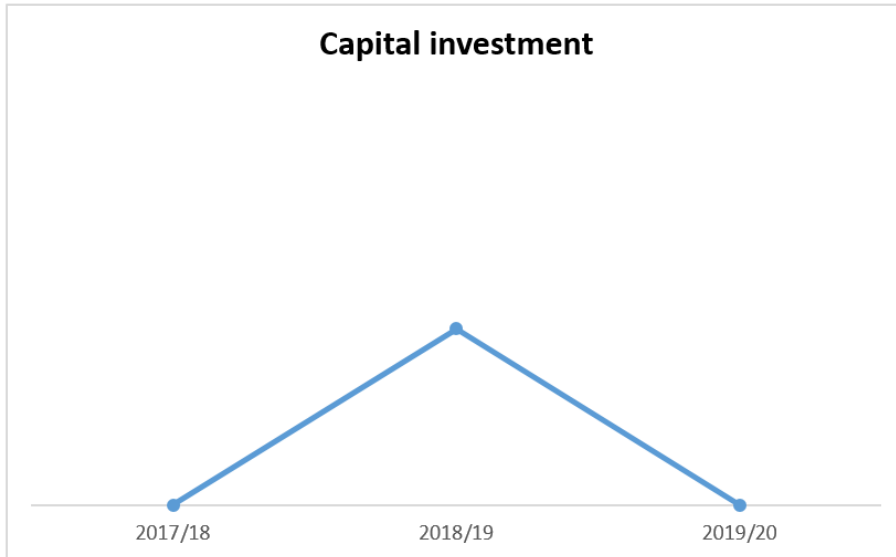


Figure 10 - Capital investment

As demonstrated above, Cromford engaged in capital investment in financial year 2018/19. Capital investment during this period related to Cromford’s production of like goods and other products.

Capacity and capacity utilisation

Cromford’s production capacity was consistent during the period and reported with respect to its production of all plastic film, given that like goods and other plastic films (non-subject goods) are manufactured on the same production lines.

Figure 11 below shows Cromford’s capacity utilisation of its film lines.

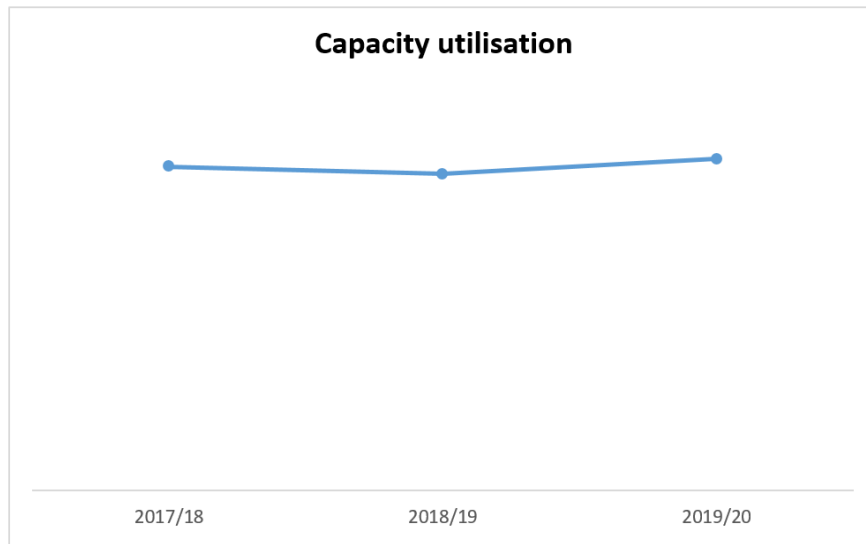


Figure 11 – Capacity utilisation

As demonstrated above, Cromford’s capacity utilisation remained relatively stable during the period examined, while increasing marginally during 2019/20.

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R&D expenses – Cromford did not engage in any R&D activities in relation to its production of like goods during the injury analysis period.

Employment and wages – Cromford provided information to show that total wages decreased during the injury analysis period. However, the information was reported at a total company level and Cromford did not provide information that evidenced that wages or employment had decreased, with respect to its production and sales of like goods.

Productivity – Cromford reported productivity for the production of all plastic films. Productivity declined in 2018/19 before increasing in 2019/20. Cromford did not provide information to show that productivity had changed with respect to its production and sales of like goods.

Inventories – Cromford described that it produces to order and therefore changes in stocks are not relevant to the assessment of injury for its production and sales of like goods. Cromford provided information relating to its stocks in support of this claim.

Cash flow measures – Cromford sells like goods and other products (non-subject goods) to the same customers and therefore changes in cash flow relate to both subject and non-subject goods. Cromford did not provide any information to show that it had experienced injury with respect to changes in cash flow for its production and sales of like goods.

7.7 Preliminary finding

The commission is satisfied that Cromford has experienced injury in the form of:

- reduced sales volume
- reduced market share
- price suppression
- price depression
- reduced profit and profitability
- reduced revenue
- reduced ROI.

8 HAS DUMPING CAUSED MATERIAL INJURY?

8.1 Preliminary assessment

The Commissioner is preliminarily satisfied that dumped exports of the goods from Malaysia, caused material injury to the Australian industry.

This assessment is based on:

- the economic indicators of the Australian industry
- the size of dumping margins
- the volumes and prices of exports from Malaysia
- the importance of price in the market
- evidence of import prices impacting pricing negotiations in the market
- the analysis of a significant supply contract that the Australian industry lost.

8.2 Legislative framework

Under section 269TG, one of the matters that the Minister must be satisfied of in order to publish a dumping duty notice is that, because of the dumping, material injury has been, or is being caused, or is threatened to the Australian industry producing like goods.

Subsection 269TAE(1) outlines the factors, to which the Commissioner has had regard, and that may be taken into account when determining whether material injury to an Australian industry has been, or is being, caused or threatened.

Subsection 269TAE(2A) requires that regard be had to the question as to whether any injury to an industry is being caused by a factor other than the exportation of the goods, and provides examples of such factors.

When assessing material injury, the commission also has regard to the *Ministerial Direction on Material Injury 2012* (Material Injury Direction).

8.3 Approach to causation analysis

As outlined in Chapter 7, the commission considers that the Australian industry has experienced injury and this injury has coincided with the presence of dumped goods from Malaysia. This chapter will analyse whether injury to the Australian industry was caused by dumping and whether that injury is material.

The commission assessed injury and causation through the examination of relevant factors in the market generally and through detailed analysis of a significant lost supply contract. The commission has, for the purposes of this SEF, assessed injury and causation through an examination of the following evidence:

- verified volume, price, and profit effects of the Australian industry during the injury period and investigation period
- verified sales data from cooperating exporters and importers to determine sales prices and volumes achieved during the investigation period

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- information from the ABF import database to determine import volumes during the injury analysis period, and for other exporters of the goods
- examples and related evidence regarding negotiations with customers from Cromford and other interested parties
- the broader context of the economic condition of the Australian industry.

Tender analysis

One of Cromford's injury claims relates to a lost sales contract. This contract was subject to a competitive tender process that was awarded during the investigation period.

As part of the investigation, the commission sought information from the Australian industry, importers, exporters, and GFG Alliance companies, in relation to this supply agreement.

When analysing price and volumes effects in relation to the tender negotiations, the commission has relied on information received from Cromford and other interested parties that provided a response with relevant information.

Specific examination of the tender negotiations is set out at section 8.9 of this chapter.

Evidence relied upon in the analysis in this chapter, including the analysis of the tender negotiations, is in **Confidential Attachments 24 and 25**.

8.4 Size of dumping margins

Section 269TAE(1)(aa) provides that regard may be given to the size of the dumping margins worked out in respect of the goods of that kind that have been exported to Australia.

The commission found that dumping margins for cooperating exporters ranged from 17.2% to 23.2%. The commission found the dumping margin for all other exporters to be 30.9%.

8.5 Volume effects

Figure 1 in chapter 5.5 depicts sales volumes in the Australian market and Figure 4 in chapter 7.3.2 depicts the Australian market share.

The Australian industry's sales volumes and market share decreased during the investigation period, while dumped imports from Malaysia accounted for greater than 85% of total sales volumes in the Australian market during this period.

The commission has assessed Cromford's injury claims for lost volumes further as part the tender analysis at section 8.9.

8.6 Price effects

In its application, Cromford stated that it had reduced prices in an attempt to maintain supply contracts and increase its market share. Cromford provided evidence of internal

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tracking of competing import prices, which were said to influence its own pricing agreements with customers.

8.6.1 Price undercutting

As described in section 7.4, the commission examined price effects, having regard to the specifications of the goods that were sold in the highest volumes.

The commission compared the delivered (FIS) selling prices of verified importers with the price of Cromford's concrete underlay film of equivalent specifications at the same level of trade. This information pertains to the major exporters of the goods and represents a significant proportion of the total imports of the goods from Malaysia. As such, it was considered to be representative of import prices generally.

The commission found that imported goods sourced from Malaysia undercut the Australian industry across all major models. This was more pronounced for models that were sold in higher volumes (e.g. 4m x 200micron x 50m), and particularly for high impact black concrete underlay film.

For illustration, the midpoint of Cromford's selling prices and verified importers' selling prices of black medium impact and high impact 4m x 200micron x 50m concrete underlay film has been graphed below, to demonstrate the comparative level of undercutting.

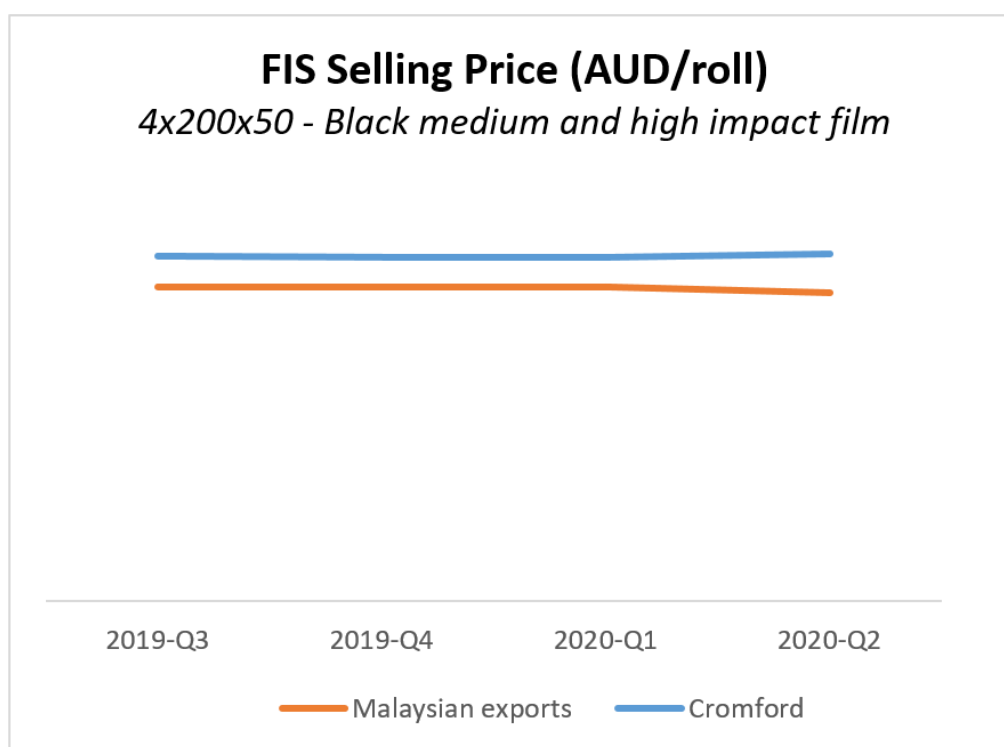


Figure 12 - Price undercutting

As set out above, the data demonstrates that dumped imports from Malaysia undercut Cromford's selling prices during the investigation period.

For sales of specifications and dimensions sold in the highest volumes (i.e. high and medium impact black concrete underlay film of dimensions 4m x 200microns x 50m), price undercutting was observed across all quarters during the investigation period.

8.6.2 Assessment – Price undercutting

The price undercutting analysis provides information that aids in assessing the effect of dumped imports on the Australian industry's prices and whether this caused injury in the form of price depression and price suppression, amongst others.

The commission has established that the Australian market for black concrete underlay film is primarily composed of imports from Malaysia, while the Australian industry maintains a less significant market presence.

Information from interested parties indicated that the Australian market is extremely competitive.⁵⁸ For example, the goods have been described as a commoditised product,⁵⁹ such that buyers may source the goods from multiple suppliers and are readily able to change suppliers.

There are multiple Malaysian suppliers that have an established presence in the Australian market, with price competition between suppliers impacting prices in the market generally.

For example, the commission found evidence of the Australian industry reducing price offers during the investigation period, in response to significant undercutting from Malaysian exports.⁶⁰

As a result of the information examined, the commission considers that the Australian industry has experienced price depression and price suppression due to the presence of dumped Malaysian exports in the Australian market.

8.7 Profit and profitability

Cromford experienced a downward trend in profitability during the period examined, as demonstrated in Figure 6 in chapter 7.5.

In its application, Cromford claimed that reduced prices, revenue, profits and profitability were due to aggressive pricing decisions aimed at increasing sales volumes.⁶¹

Profit is a function of sales revenue and costs. As demonstrated in Figure 5 in chapter 7.4, Cromford's pricing did not trend in line with changes in costs, resulting in a downward trend in profit and profitability.

The commission found that pricing sensitivities placed significant pressures on Cromford's ability to retain sales volumes, due to the level of undercutting of dumped imports.

⁵⁸ EPR 554, Item No. 16 and 18.

⁵⁹ EPR 554, Item No. 18, p. 19.

⁶⁰ Confidential Attachment 24.

⁶¹ EPR 554, Item No. 1.

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In this context, the commission considers that Cromford was forced to adjust prices to maintain sales volumes, as a result of low import prices from dumped goods from Malaysia.

Accordingly, the commission considers that the Australian industry has experienced reduced profit and profitability, due to the presence of the dumped imports from Malaysia.

8.8 Other economic factors

In chapter 7.6, the commission found that Cromford experienced injury in the form of reduced revenue and ROI.

The commission has found that price pressure from dumped imports resulted in price suppression and price depression, and a reduction in volumes. These factors together have resulted in reduced revenue and ROI.

8.9 Assessment of Tender analysis

8.9.1 Cromford's application and further information provided

Cromford claimed that lost sales volumes and reduced market share stemmed from the loss of a supply agreement with GFG Alliance. This agreement was subject to a competitive tender process that was finalised in the latter part of the investigation period.

In its application, Cromford set out that:⁶²

- it lodged a tender proposal for sales of like goods for the New South Wales (NSW), Queensland (QLD), and Victorian (VIC) sites
- it lost the business to supply QLD and VIC outright, but was offered the opportunity to revise pricing in NSW
- imported builders film from Malaysia was being trialled in NSW, which was contemporaneous with the noticeable fall in its sales volumes during March, April and May in 2020.

In Cromford's opinion, it was more competitive in the NSW market due to lower freight costs. However, Cromford confirmed that the outcome of the NSW tender was unsuccessful, resulting in significant sales volumes lost to this customer.⁶³

Cromford considers that the loss of sales volumes from the tender process is a direct consequence of dumped imports from Malaysia undercutting its prices. Cromford described that, while it had reduced its price offer in an attempt to retain this business, it was unable to reduce prices further while maintaining a profit margin for its sales.

Cromford provided copies of tender proposals submitted in relation to the tender, relevant to this assessment.

⁶² EPR 554, Item No. 1: Application, Australian Industry LCM General Products Pty Ltd.

⁶³ EPR 554, Item No. 20: Verification report, Australian Industry, LCM General Products Pty Ltd.

8.9.2 Sales volumes and market share

The commission assessed Cromford's reduced sales volumes and changes in import volumes from Malaysia, in relation to the lost supply agreement.

Assessment of volume effects

The commission found that sales volumes lost as a result of the tender outcome accounted for a significant percentage of Cromford's overall sales of like goods. This is illustrated in the material decline in Cromford's sales volumes in the latter part of the investigation period (at Figure 3 in chapter 7.3.1).

The commission also found that Cromford's lost sales volumes during this period were directly replaced by dumped imports from Malaysia.

Based on this analysis, the commission considers that changes in Cromford's sales volumes and market share were significantly connected to this lost supply agreement. This analysis also indicated that Cromford's reduction in sales volumes during the investigation period was not due to changes in market demand.

8.9.3 Price effects and price undercutting

The commission assessed price effects in relation to the tender negotiations, having regard to information from Cromford and other interested parties that provided a response.

Tender analysis – methodology

First, for the purpose of assessing price undercutting, the commission compared FIS selling prices agreed to from the tender negotiations, against Cromford's final bid offers at FIS terms.

The analysis demonstrates that imported goods from Malaysia undercut the Australian industry across major markets and product types.

From the examination of tender documentation, it was confirmed that Cromford reduced its price offer in a secondary bid for the NSW market. However, it was apparent that Cromford's final bids (in NSW and other markets) were not price competitive with the imported goods from Malaysia, due to the levels of undercutting.

Secondly, to assess whether dumping was material to the price negotiations, the commission compared Cromford's final bids to FIS selling prices from the successful bidder, adjusted to reflect the impact of dumping.

To do this, the commission added the amount for dumping, by calculating the applicable increase to the FOB value of the goods. The amount for dumping was then added to FIS selling prices from the successful bidder, to assess whether Cromford would have been likely to maintain supply agreements, but for the presence of dumped goods.

Noting that importers may source from multiple suppliers, the commission has relied on the lowest applicable increase to the FOB value, based on the cooperative exporters of

the goods. This reflects a conservative estimate of the increase in prices to reflect the dumping.

Assessment of price effects

From the analysis, the commission found that Cromford would have been at a price advantage for major product types (e.g. black concrete underlay film of 4m x 200microns x 50m) in certain significant markets, compared to the successful bid, once the competitor's price had been adjusted for dumping.

As such, the commission considered that but for the presence of dumped goods, Cromford would have been likely to maintain a material volume of lost sales, on the basis of price related factors.

The commission also considered whether other factors may have impacted upon Cromford's ability to maintain supply arrangements, lost as a result of the tender negotiations.

8.9.4 Other relevant factors to the tender process

The commission received a response from InfraBuild which described relevant factors that contributed to the supplier(s) chosen for the goods.⁶⁴ The commission also received information from other interested parties, concerning factors that were considered relevant to the tender negotiations.⁶⁵

From the responses provided, the commission considers that pricing was a significant factor in the tender negotiations,⁶⁶ while other factors were also relevant to the chosen supplier(s).⁶⁷

Relevant information assessed in relation to non-price factors is set out in **Confidential Attachment 25**.

Assessment of other relevant factors to the tender process

Having regard to the information available, the commission did not identify any significant factor that made Cromford uncompetitive in the tender negotiations, besides price related factors.

8.9.5 Conclusion – Assessment of tender negotiation

The commission assessed Cromford's competitiveness in the tender negotiations, but for the dumping, by taking into account the respective level of price undercutting and the dumping margins.

⁶⁴ EPR 554, Item No. 19, Confidential Attachment A.

⁶⁵ For example, refer to EPR 554, Item No. 1, 16, 18 and 20.

⁶⁶ EPR 554, Item No. 18 and 20.

⁶⁷ EPR 554, Item No. 19, Confidential Attachment A.

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Based on this analysis, the commission considers that Cromford would have been at a comparative advantage for major product types in certain markets, but for the presence of dumped imports.

The commission found that price is a significant factor in the Australian market, while other non-price relevant factors were not identified as significant contributing factors that resulted in Cromford losing supply agreements as a result of the tender negotiations.

As such, the commission considers that the Australian industry has experienced lost sales volumes and reduced market share in relation to this lost tender, due to the presence of the dumped imports from Malaysia.

8.10 Factors other than dumping causing injury

8.10.1 Information from interested parties

In its application, Cromford stated that sales of concrete underlay film correlate with activity in the construction industry. Cromford also noted that, during the injury examination period, housing construction activity fell through to mid-2019, after which it began to increase (by approximately one per cent between March 2019 and March 2020).

Interested parties also mentioned that the following factors may have caused injury to the Australian industry:

- capacity constraints⁶⁸
- high internal freight costs.⁶⁹

8.10.2 Assessment of factors other than dumping

Demand

As set out at section 8.9.2, the commission found that Cromford's lost sales volumes during the investigation period were directly replaced by dumped imports from Malaysia. The commission also found that the overall volumes of imports increased during the investigation period.

As a result, the commission does not attribute Cromford's reduced sales volumes, market share and revenue to changes in demand.

Capacity

Having regard to Cromford's capacity utilisation, market share and the size of the Australian market, the commission observes that the Australian industry has capacity limitations, in terms of its inability to supply a significant proportion of the Australian market for the goods.

⁶⁸ EPR 554, Item No. 18.

⁶⁹ Ibid.

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However, the commission found that Cromford had excess capacity throughout the period examined. Additionally, for major supply agreements that were lost, these had previously been maintained over a period of time.

Therefore, it was not apparent that injury was a result of capacity constraints.

Consequently, the commission does not attribute Cromford's reduced sales volumes and revenue to Cromford's overall capacity limitations.

Transport costs

In terms of its own costs, Cromford acknowledged that it is at a commercial disadvantage compared to importers of the goods in respect of freight costs for interstate sales. Particularly in regional areas further away from the primary sales destinations of NSW, VIC and metropolitan QLD. However, Cromford represented that feedback relating to the tender negotiations indicated that product pricing differences (i.e. the EXW selling price of builder's film) was the major issue for pricing competitiveness with imported goods.

As set out in section 8.9.4, the commission has assessed selling prices on FIS terms (including transport costs), for the purpose of assessing Cromford's competitiveness for supply agreements for the goods. In doing so, the commission has had regard to transport costs as part of its causation analysis.

8.10.3 Non-compliant film

Aside from the factors outlined above, it is noted that Cromford's application contains allegations of non-compliant builder's film being used as a direct substitute for its compliant products.

Cromford claimed that alleged exports of non-compliant goods were at dumped prices. Consequently, Cromford considers that, despite the apparent lower grade of these products, it is the dumping of these products that causes injury.

As set out in chapter 5.3.2, the commission notes that the goods under consideration specifically includes builder's film that could not meet the Australian Standard.

However, the commission observed that most of the verified sales within the scope of the goods under consideration were marketed as compliant with the Australian standard. Additionally, the commission has not made an assessment in relation to Cromford's claims concerning the use of non-compliant goods in the Australian market.

Therefore, for the purpose of assessing Cromford's injury claims, such as price undercutting, the commission has compared only those products that are directly comparable (i.e. black concrete underlay film of identical specifications).

8.10.4 Conclusion

The commission has considered the relevance of other factors raised, in its assessment of the materiality of injury caused by dumping.

As stated in the *Ministerial Direction on Material Injury*,⁷⁰ the commission notes that injury from dumping need not be the sole cause of injury to the industry, where injury caused by dumping is material in degree.

8.11 Materiality of injury that dumping caused

ADN No. 2012/24 provides that the materiality of injury caused by a given degree of dumping can be judged differently, depending on the economic condition of the Australian industry suffering the injury.

When considering the materiality of the injury caused by dumping, the commission had regard to a number of factors, including:

- the size of the Australian market for the goods and like goods
- the relative market share of the Australian industry, dumped imports, and changes in sales volumes
- the size of the dumping margins
- price undercutting from dumped imports, and the perceived importance of price in the market
- the significance of dumped imports on the economic condition of the Australian industry
- the significance of other relevant factors that may have caused injury.

The commission notes that the volume of dumped goods accounted for a significant proportion of volumes in the market. These volumes increased during the investigation period and were found to have directly displaced a substantial volume of Australian industry's sales.

For example, it was found that the lost tender which was connected to dumped imports from Malaysia, in itself, had a material impact on Australian industry's sales volumes during the investigation period. This contributed to a decline in Australian industry's market share and revenue for like goods.

The commission found importers of the goods from Malaysia to be price setters in the Australian market. Those prices included dumping margins from all exporters between 17.2% and 30.9%.

Dumped goods from Malaysia were at a price point that influenced prices within the market generally. For example, the commission observed that Cromford reduced price offerings during the investigation period, in direct response to low import prices from dumped exports from Malaysia.

Based on the information examined, the Commissioner is preliminarily satisfied that dumped exports from Malaysia resulted in a material decline in the economic condition of the Australian industry, such as through placing downward pressure on Australian industry prices and displacing sales volumes.

⁷⁰ ADN No. 2012/24, dated 27 April 2012.

8.12 Preliminary findings

The Commissioner is preliminarily satisfied that dumped imports from Malaysia have caused injury to the Australian industry in the forms of:

- reduced sales volumes
- reduced market share
- price depression
- price suppression
- reduced profit and profitability
- reduced revenue
- reduced ROI.

9 WHETHER DUMPING MAY CONTINUE

9.1 Preliminary assessment

The Commissioner is preliminarily satisfied that, dumping may continue in relation to the goods exported from Malaysia.

9.2 Introduction

When publishing a notice under subsection 269TG(2), the Minister must be satisfied that, dumping may continue. In assessing whether dumping may continue, the commission considers the term 'may' to mean 'possible'.

9.3 Whether dumping may continue

When assessing whether dumping may continue, the commission considers prior evidence of dumping to be a relevant consideration.

The commission's analysis found dumping margins of between 17.2% and 30.9% for Malaysian exporters during the investigation period. Significant dumping margins were observed for all exporters and concerning all models (MCC categories) during the investigation period.

The commission also examined import volumes from the ABF import database during and following the end of the investigation period. The commission observes that imports from Malaysia have continued in significant volumes and continue to maintain a similar percentage of the total import volumes.

Imports from Malaysia accounted for greater than 95% of all imports of black concrete underlay film during the investigation period and the subsequent period assessed.

The commission's assessment of the market found that importers may source from multiple suppliers. Various Malaysian exporters compete for supply agreements, creating significant price pressures in the market. This includes exporters that did not directly participate in the investigation.

The commission also found evidence of low market prices being established in the Australian market due to ongoing supply agreements.

The commission has received information from interested parties outlining that costs of concrete underlay film from overseas have increased since the investigation period.⁷¹ However, increased costs have been attributed to increased shipping costs,⁷² and therefore do not provide a basis for dumping to cease.

⁷¹ EPR 554, Item No. 19

⁷² EPR 554, Item No. 14, 18 and 19.

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Additionally, from the import data examined, the commission has not identified any apparent increase in FOB export prices following the end of the investigation period.

Therefore, based on the magnitude of the dumping margins found, the importance of price in this market, price undercutting, and the established links and volumes that Malaysian exporters maintained, the Commissioner considers that dumping may continue.

9.4 Commissioner's assessment

Based on the available evidence, the Commissioner is satisfied that exports of the goods from Malaysia may continue in the future at dumped prices.

10 NON-INJURIOUS PRICE

10.1 Preliminary findings

The commission calculated a non-injurious price (NIP) for the cooperative exporters and all other exporters from Malaysia. The NIP is less than the normal value for all exporters of the goods from Malaysia.

The Commissioner proposes to recommend that the Minister have regard to the desirability of applying the lesser duty rule to exports of the goods from Malaysia.

10.2 Legislative and policy framework

Under section 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act), the Minister must have regard to the desirability of applying a lesser duty such that the sum of the ascertained export price and the interim dumping duty payable does not exceed the NIP of the goods. This would occur, in this case, where the NIP is less than the normal value.

Section 269TACA of the Act defines the NIP as ‘the minimum price necessary to prevent the injury, or a recurrence of the injury’ caused by the dumped or subsidised goods, the subject of a dumping duty or a countervailing duty notice.

However, pursuant to section 8(5BAA) of the Dumping Duty Act, the Minister is not required to have regard to the lesser duty rule where one or more of the following circumstances apply:

- the normal value of the goods was not ascertained under section 269TAC(1) because of the operation of section 269TAC(2)(a)(ii)
- there is an Australian industry in respect of like goods that consists of at least 2 small-medium enterprises, whether or not that industry consists of other enterprises.

Based on the information assessed, neither of those circumstances are considered relevant to this investigation.

10.3 Non-injurious price

The NIP is the price that would be sufficient to remove the injury caused to the Australian industry from dumped exports.

The commission will generally derive the NIP from the Australian industry’s unsuppressed selling price (USP). The USP is a selling price that the Australian industry could reasonably achieve in the absence of dumping.

The commission’s approach to establishing the USP is set out in the Manual, with the USP generally determined within the following hierarchy:

- industry selling prices at a time unaffected by dumping
- constructed industry prices – industry cost to make and sell plus profit

- selling prices of un-dumped imports.

Having calculated the USP, the commission 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.

10.4 Submission received in relation to the USP

Cromford claimed that it would be unsuitable to use its selling prices in the period prior to the investigation period as the basis for the USP. In Cromford's opinion, prices have been affected by dumped imports from Malaysia since the business was acquired in 2017. Cromford provided historical price lists from 2014 (from prior to the acquisition by the Martogg Group), which it claims can be used as a benchmark for prices that could be achieved in a market unaffected by dumping.

Cromford claimed that selling prices effective September 2021 are suitable to assess a rate of profit, for the construction of the USP. This is on the basis that market conditions have allegedly changed, due to the prospect of provisional measures.

Cromford estimated an amount of profit based on its sales values and costs achieved in June 2021 to August 2021, adjusted for the additional profit expected as a result of price increases.

The commission's assessment

For the purpose of ascertaining a USP, a minimum of one year of selling prices is preferred, and seasonal fluctuations or longer cyclical trends are taken into account, if applicable.⁷³

Cromford's proposed methodology relies on the expected profitability of future sales, rather than sales that have already incurred. Therefore it does not reflect verifiable sales data examined over an extended period of time.

Additionally, the commission had regard to market data and responses from other interested parties to assess Cromford's claims.

Import data assessed does not support Cromford's claims in relation to alleged changes in import volumes, export prices, or reasons for changes in market conditions. Rather, from the information available, it appears that current market conditions may have been affected by increased ocean freight costs as a result of COVID-19.⁷⁴

Having regard to these factors, the commission does not consider Cromford's proposed methodology to be suitable for the purpose of ascertaining a USP.

⁷³ Dumping and Subsidy Manual (November 2018), p. 138.

⁷⁴ For example, refer to EPR 554, Item No. 14, 18 and 19.

10.5 Calculation of the NIP

The Commission notes that it has not previously investigated the goods under consideration. Malaysian exports were prevalent in the Australian market during the investigation period and prior periods examined – accounting for greater than 80% of the total market volumes.

The Commission therefore considers that industry selling prices in the period prior to the investigation period may not be the most suitable basis on which to establish a USP.

For the purpose of determining a NIP, in accordance with section 269TACA, the commission, instead, ascertained a USP having regard to constructed industry prices. Specifically, the commission used the industry cost to make and sell during the investigation period plus a profit.

For this purpose, the commission relied on Cromford's verified profit margin for goods of the same general category (orange concrete underlay film). The profit for sales in the same period was used, as a proxy for a profit margin that could reasonably have been achieved.

The commission calculated that the NIP is lower than the normal value for all exports of the goods from Malaysia and is therefore the operative measure.

Consequently, the commission also calculated the recommended level of securities with reference to the NIP.

Preliminary calculations of the NIP are outlined in **Confidential Attachment 26**.

11 PROPOSED MEASURES

11.1 Preliminary finding

The Commissioner proposes to recommend to the Minister that anti-dumping measures, using the *ad valorem* duty method, be imposed in the form of a dumping duty notice in respect of dumping duty that may become payable by importers of the goods from Malaysia.

11.2 Forms of dumping duty available

The forms of duty available to the Minister when imposing anti-dumping measures are prescribed in the *Customs Tariff (Anti-Dumping) Regulation 2013* and include:

- fixed duty method (\$X per tonne)
- floor price duty method
- combination duty method
- *ad valorem* duty method (i.e. a percentage of the export price).⁷⁵

The various forms of duty all have the purpose of removing the injurious effects of dumping. However, in achieving this purpose, certain forms of duty will better suit particular circumstances than others. When considering which form of duty to recommend to the Minister, the Commissioner will have regard to the *Guideline on the Application of Forms of Dumping Duty* (the Guidelines) and relevant factors in the market for the goods.⁷⁶

11.2.1 Fixed duty method

A fixed duty method operates to collect a fixed amount of duty – regardless of the actual export price of the goods. The fixed duty is determined when the Minister exercises their powers to ascertain an amount for the export price and the normal value.

11.2.2 Floor price duty method

The floor price duty method sets a ‘floor’ – for example a normal value of \$100 per tonne – and duty is collected when the actual export price is less than that normal value of \$100 per tonne. The floor price is either the normal value or the NIP, whichever becomes applicable under the duty collection system.

11.2.3 *Ad valorem* duty method

The *ad valorem* duty method is applied as a proportion of the actual export price of the goods. An *ad valorem* duty is determined for the product as a whole. This means that a single ascertained export price is required when determining the dumping and/or subsidy

⁷⁵ Section 5 of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

⁷⁶ Available on the commission website.

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margin. The *ad valorem* duty method is the simplest and easiest form of duty to administer when delivering the intended protective effect.

11.2.4 Combination duty method

The combination duty method comprises two elements: the 'fixed' element and the 'variable' duty element. The fixed element is determined when the Minister exercises powers to 'ascertain' an amount (i.e. set a value) for the export price and the normal value. This may take the form of either a fixed duty or an *ad valorem* applied to the ascertained export price.

If the actual export price of the shipment is lower than the ascertained export price, the variable component works to collect an additional duty amount, i.e. the difference between the ascertained export price and the actual export price. It is called a 'variable' element because the amount of duty collected varies according to the extent the actual export price is beneath the ascertained export price.

11.3 Commission's consideration

The commission assessed relevant factors in the market for the goods, namely that:

- Malaysian suppliers were not found to be related to importers of the goods, such that there are not complex company structures where circumvention may be more likely
- there are price variances, due to differences in impact resistance and/or dimensions
- the commission did not find high price varieties or certain models that were causing injury.

The commission considers it suitable for IDD that may become payable, to be calculated using the *ad valorem* duty method.

11.4 Proposed recommendations

A summary of the Commissioner's proposed recommendations and the effective rates of interim duty are shown in the table below.

Country	Exporter	Effective rate of duty	Proposed Duty method
Malaysia	Great Cosmo	14.2%	<i>Ad valorem</i>
	L&L Trading	22.8%	
	Unistar	16.4%	
	Plastik V	11.4%	
	JLP	20.1%	
	All other exporters	23.5%	

Table 16 - Interim dumping duty rates

12 PRELIMINARY AFFIRMATIVE DETERMINATION

12.1 Introduction

Under section 269TD, at any time not earlier than 60 days after the date of the initiation of an investigation into whether there are sufficient grounds for the publication of a dumping duty notice, in respect of the goods subject to the application, the Commissioner may make a preliminary affirmative determination (PAD). The Commissioner may make a PAD on being satisfied that:

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

In relation to a dumping investigation, the Commonwealth may, at the time of making a PAD (or at any later time during the investigation), require and take securities under section 42, in respect of any IDD that may become payable. The Commissioner may do this if satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

12.2 Finding

As outlined previously, the Commissioner has found that the goods exported from Malaysia during the investigation period were at dumped prices (Chapter 6 refers).

The Commissioner is also preliminarily satisfied that the dumped exports have caused material injury to the Australian industry producing like goods (Chapter 8 refers).

Accordingly, the Commissioner has decided to make a PAD under section 269TD and is satisfied that it is necessary to require and take securities under section 42 to prevent material injury to the Australian industry occurring while this investigation continues.

12.3 Securities

The PAD, including the level of securities, will be publically notified through an ADN.⁷⁷ Securities will be collected from all exporters of the goods from Malaysia, entered for home consumption on, or after, 28 September 2021.

The Commonwealth will calculate the amount of securities payable using the *ad valorem* duty method. The securities applicable to the goods exported to Australia will apply as follows:

⁷⁷ In accordance with sections 269TD(4)(a) and 269TD(5).

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Country	Exporter	Effective rate of securities	Proposed Duty method
Malaysia	Great Cosmo	14.2%	<i>Ad valorem</i>
	L&L Trading	22.8%	
	Unistar	16.4%	
	Plastik V	11.4%	
	JLP	20.1%	
	All other exporters	23.5%	

Table 17 - Summary of securities

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APPENDICES AND ATTACHMENTS

Confidential Attachment 1	Australian market size assessment
Confidential Attachment 2	GCI – Export Price
Confidential Attachment 3	GCI – CTMS
Confidential Attachment 4	GCI – Normal Value
Confidential Attachment 5	GCI – Dumping Margin
Confidential Attachment 6	L&L Trading – Export Price
Confidential Attachment 7	L&L Trading – CTMS
Confidential Attachment 8	L&L Trading – Normal Value
Confidential Attachment 9	L&L Trading – Dumping Margin
Confidential Attachment 10	Unistar – Export Price
Confidential Attachment 11	Unistar – CTMS
Confidential Attachment 12	Unistar – Normal Value
Confidential Attachment 13	Unistar – Dumping Margin
Confidential Attachment 14	Plastik V – Export Price
Confidential Attachment 15	Plastik V – CTMS
Confidential Attachment 16	Plastik V – Normal Value
Confidential Attachment 17	Plastik V – Dumping Margin
Confidential Attachment 18	JLP – Export Price
Confidential Attachment 19	JLP – Normal Value
Confidential Attachment 20	JLP – Dumping Margin
Confidential Attachment 21	All other exporters – Dumping Margin
Confidential Attachment 22	Cromford – Assessment of economic condition
Confidential Attachment 23	Cromford – Other economic factors
Confidential Attachment 24	Injury and causation analysis
Confidential Attachment 25	Tender analysis
Confidential Attachment 26	NIP calculations