Lionel Samson Packaging Co Pty Ltd
ABN 83 601 284 312

Perth - Head Office
470 Belmont Avenue
Kewdale WA 6105

PO Box 138 Cloverdale WA 6985

T. +61 8 9333 2444
F. +61 8 9333 2412
E. sales@sadleirspackaging.com.au

www.sadleirs.com.au

PUBLIC RECORD – NON-CONFIDENTIAL

15 October 2021

Case number: 554 - Concrete underlay film from Malaysia

Contact person: Steven Quick
Email: squick@sadleirs.com.au
Role: Importer

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

Dear Director,

RE: RESPONSE TO THE STATEMENT OF ESSENTIAL FACTS NO. 554

1. Introduction

Sadleirs Packaging (Sadleirs) is an importer of concrete underlay film from Malaysia (the goods). Sadleirs supplies these goods to clients across the country.

Sadleirs makes the following comments and representations in relation to the recently published Statement of Essential Facts (SEF 554) and Preliminary Affirmative Determination (PAD 554).

2. Summary of findings in SEF 554 and relevant legislation that are the subject of this response

Section 269TACA of the Customs Act 1901 ("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."

In SEF 554, the Anti-Dumping Commission ("the Commission") calculated the NIP from the established unsuppressed selling price (USP) by deducting the costs incurred in getting the goods from the export FOB point to the relevant level of trade in Australia, such as overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

The Commission determined 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 calculated the recommended level of securities with reference to the NIP.

The Commission recommended that the Minister have regard to the desirability of applying the lesser duty rule, such that the sum of the ascertained export price and the interim dumping duty payable does not exceed the NIP of the goods.

3. Changes in variable factors used in the NIP calculation

Global supply chains have been significantly impacted by Covid-19. The increased costs and challenges due to this global crisis affect all businesses and consumers. This has been widely reported, including in the:

- Productivity Commission (2021), 'Vulnerable Supply Chains' (https://www.pc.gov.au/inquiries/completed/supply-chains/report/supply-chains.pdf)
- RBA's 'Statement on Monetary Policy – May 2021. Box B: Supply Chains During the COVID-19 Pandemic' (https://www.rba.gov.au/publications/smp/2021/may/box-b-supply-chains-during-the-covid-19-pandemic.html)

This RBA article indicates there is a link between supply chain issues and building materials inflation:

- RBA's 'Statement on Monetary Policy – August 2021: Inflation, Graph 4.5 (https://www.rba.gov.au/publications/smp/2021/aug)

The specific costs of note are the significant increased shipping costs to import the goods into Australia, which have increased by over 400% in the last 6 months. Over the last 3 months shipping costs have increased at an even higher rate.

4. Argument

While the current shipping crisis and the vastly increased freight costs are irrespective of whether dumping is occurring or not, they directly impact the level of injury the imported goods have on the Australian industry. The NIP is calculated by subtracting costs, including international freight, from the USP, therefore it is Sadleirs position that these volatile shipping costs are considered when determining the NIP and by extension, the duty amount applicable.

The 'Anti-Dumping streamlining reform' (2011) and subsequent evaluation (2016) notes the need to review how the NIP is calculated:

> "Non-injurious price and the lesser duty rule (reform 4.3)
> The method of determining the non-injurious price will be revised recognising that injury to industry can take different forms, and that more flexible consideration of relevant factors will provide a more effective remedy that is tailored to the injury caused in a particular case"

Currently freight rates are potentially more volatile than ever, reaching unprecedented costs. This presents an opportune time to enact a recognised need uncovered in the 2011 streamlining reform. Sadleirs requests the NIP calculation and subsequent IDD be reflective of the current landscape, so that the duty is not excessively punitive on exporters/importers and the downstream users of the imported goods. At the very least, prior to the final decision a reassessment of the current NIP and the freight costs used in its calculation, should be undertaken, with special consideration to the current global shipping crisis.

Just as Customs Act 1901 - SECT 269TAF addresses the currency conversion variable in certain calculations, Sadleirs recommends that the global freight rates variable is similarly addressed. This does not need to be a per shipment adjustment, but potentially a monthly adjustment to the duty amount if there is sustained movement in freight rates.

The calculations to determine other essential values needed in assessing a dumping duty, are legislated (e.g. Normal Value and Unsuppressed Selling Price). Rightly or wrongly, the calculation for the NIP is not legislated. The variables used in the calculations of the NIP (freight, profit margin etc) are undefined and potentially unrealistic. Incorrect/unfair assessment of the NIP could protect uncompetitive local industries at the cost of denying downstream industries access to globally sourced products at a competitive cost.

The SEF notes that the applicant is unable to supply a significant proportion of the Australian market due to capacity. If freight rates are significantly higher than what was used in the NIP calculation, the duty could easily be excessive and push the domestic price of these essential imported products, well above the USP. This would only serve to negatively impact the multitude of entities and individuals that require this product as a means of business.

As is noted in the 'Vulnerable Supply Chains – Interim Report (March 2021)':

> "Governments can facilitate more effective responses to supply chain disruptions by creating a regulatory and policy environment that avoids unnecessary impediments to domestic and international trade. An open trading environment allows firms to deal with operating uncertainties or unanticipated risks in their supply chains, and to adapt their production or supply chains in response to a major disruption at a lower cost."

5. Conclusion

Sadleirs requests a review of the Commission's findings taking into account this information.

Kindest Regards

Steven Quick
State Manager
Sadleirs Packaging