



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

CONSIDERATION REPORT NO. 606

**APPLICATION FOR AN ANTI-CIRCUMVENTION INQUIRY INTO
THE SLIGHT MODIFICATION OF GOODS**

**CONCRETE UNDERLAY FILM EXPORTED TO AUSTRALIA
FROM MALAYSIA**

16 June 2022

CONTENTS

CONTENTS2

ABBREVIATIONS.....3

1 SUMMARY AND RECOMMENDATIONS.....4

1.1 INTRODUCTION4

1.2 FINDING.....4

1.3 RECOMMENDATION4

2 BACKGROUND5

2.1 LEGISLATIVE BACKGROUND5

2.2 ORIGINAL NOTICE6

2.3 THE GOODS THE SUBJECT OF THE ORIGINAL NOTICE6

2.4 THE CIRCUMVENTION GOODS7

2.5 APPLICANT’S PROPOSED ALTERATIONS TO THE ORIGINAL NOTICE8

3 CONSIDERATION OF THE APPLICATION9

3.1 INTRODUCTION9

3.2 THE APPLICATION.....9

3.3 CONTENT AND LODGEMENT REQUIREMENTS.....9

3.4 REASONABLE GROUNDS FOR ASSERTING A CIRCUMVENTION ACTIVITY10

3.5 CONCLUSION14

4 CONCLUSION AND RECOMMENDATIONS15

5 APPENDICES AND ATTACHMENTS16

ABBREVIATIONS

Abbreviation	Full title
ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
circumvention goods	concrete underlay film with a width 1.95 metres (chapter 2.4 provides further information)
the commission	Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Cromford Film	LCM General Products Pty Ltd trading as Cromford Film (the applicant)
Davmar	Davmar Industries Pty Ltd
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EPR	Electronic Public Record
the goods	concrete underlay film (chapter 2.3 provides further information)
gsm	grams per square metre
IDD	interim dumping duty
INV 554	Investigation No 554 – Dumping of concrete underlay film exported from Malaysia
the then Minister	the then Minister Industry, Energy and Emissions Reduction
original notice	the dumping duty notice published under section 269TG(2), ADN No 2021/149
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REP 554	<i>Anti-Dumping Commission Report No. 554</i>

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This report outlines the consideration by the Anti-Dumping Commission (**the commission**) of an application lodged by LCM General Products Pty Ltd, trading as Cromford Film (**Cromford Film**, or **the applicant**)¹.

The application requests an anti-circumvention inquiry in relation to the dumping duty notice (**the original notice**) applying to concrete underlay film (**the goods**) imported into Australia from Malaysia.

Cromford Film alleges that some importers of the goods have been importing slightly modified goods from Malaysia to circumvent the original notice.

Cromford Film alleges that the goods exported to Australia have been slightly modified to a width of 1.95 metres (**the circumvention goods**)², so as to slightly fall outside of the 2 to 6 metre width range covered by the original notice (chapter 2.3).³

1.2 Finding

The commission has examined the application in accordance with Division 5A of Part XVB of the *Customs Act 1901* (**the Act**)⁴ and the *Customs (International Obligations) Regulation 2015* (**the Regulation**) and is satisfied that Cromford Film have met the requirements for an application, because:

- the application complies with section 269ZDBD (chapter 3.3)
- there appear to be reasonable grounds for asserting that there has been circumvention activity, through a slight modification of the goods exported to Australia, in accordance with section 48(2) of the Regulation (chapter 3.4).⁵

1.3 Recommendation

The commission recommends that the Commissioner of the Anti-Dumping Commission (**the Commissioner**) not reject the application for the reasons outlined in chapter 3.

¹ Electronic Public Report (**EPR**), Item 1, available on the commission's website via www.adcommission.gov.au.

² Chapter 2.4 provides further information regarding the circumvention goods.

³ Cromford Film states in its application that all of the circumvention goods' other properties meet the physical characteristics of the goods subject to original notice – being colour and thickness.

⁴ All legislative references are to the *Customs Act 1901*, unless otherwise stated.

⁵ Section 269ZDBE(2)(b).

2 BACKGROUND

2.1 Legislative background

The Act sets out, among other things, the procedures to be followed by the Commissioner in assessing applications for an anti-circumvention inquiry in relation to a notice published under section 269TG(2) or 269TJ(2).

Division 5A empowers the Commissioner to reject or not reject such applications. If the Commissioner does not reject an application, the Commissioner must publish a notice indicating that they will conduct an anti-circumvention inquiry.⁶

Section 269ZDBE requires the Commissioner to reject an application if not satisfied that:

- the application complies with section 269ZDBD, and
- there appear to be reasonable grounds for asserting that one or more circumvention activities have occurred.

Section 269ZDBD(1) requires that an application must:

- be in writing
- be in a form approved by the Commissioner
- contain such information as the form requires, and
- be signed and lodged in a manner approved by the Commissioner.

Without otherwise limiting the matters that can be required by the form, section 269ZDBD(2) provides that an application must include:

- a description of the kind of goods that are the subject of the original notice
- a description of the original notice the subject of the application
- a description of the circumvention activities in relation to the original notice that the applicant considers have occurred, and
- a description of the alterations to the original notice that the applicant considers should be made.

The approved application form further requires the applicant to provide evidence in support of its view that the circumvention activity has occurred.

Section 269ZDBB(6) provides that circumvention activity, in relation to a dumping and/or countervailing duty notice, occurs in the circumstances prescribed by the Regulation.

Section 48(2) of the Regulation provides that a circumvention activity involving the slight modification of goods, occurs when all the following apply:

- a) goods (the circumvention goods) are exported to Australia from a country in respect of which the notice applies
- b) before that export, the circumvention goods are slightly modified
- c) the use or purpose of the circumvention goods is the same before, and after, they are so slightly modified

⁶ Section 269ZDBE(4).

- d) had the circumvention goods not been so slightly modified, they would have been the subject of the notice and,
- e) section 8 or 10 of the *Customs Tariff (Anti-Dumping) Act 1975 (Dumping Duty Act)*, as the case requires, does not apply to the export of the circumvention goods to Australia.⁷

For the purpose of determining whether circumvention goods are slightly modified, the commission has also compared the circumvention goods and the goods the subject of the original notice, having regard to any factors considered relevant and the factors described in section 48(3) of the Regulation.

2.2 Original notice

The then Minister for Industry, Energy and Emissions Reduction (**the then Minister**) imposed anti-dumping measures, in the form of a dumping duty notice, on exports of the goods from Malaysia on 17 December 2021 following *Investigation 554 – Dumping of concrete underlay film exported from Malaysia (INV 554)*.⁸

The original notice applies to all exporters of the goods from Malaysia. Importers of the goods are required to pay interim dumping duty (**IDD**) at *ad valorem* rates ranging from 11.4% to 23.2% depending on the exporter.⁹

2.3 The goods the subject of the original notice

The goods the subject of the original notice 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.

The goods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*.

⁷ As the goods are not subject to a countervailing duty notice, section 10 of the Dumping Duty Act is not relevant to this inquiry.

⁸ The findings of the investigation are set out in *Anti-Dumping Commission Report No. 554 (REP 554)*, Anti-Dumping Notice (**ADN**) Nos. [2021/126](#) and [2021/149](#) refer. [REP 554](#) is available on the commission's website.

⁹ Further information on the IDD payable is available on the commission's *Dumping and Commodity Register*, available on the commission's website.

PUBLIC RECORD

Tariff Subheading	Statistical Code	Description
3920		OTHER PLATES, SHEETS, FILM, FOIL AND STRIP, OF PLASTICS, NON-CELLULAR AND NOT REINFORCED, LAMINATED, SUPPORTED OR SIMILARLU COMBINED WITH OTHER MATERIALS:
3920.10.00		Of polymers of ethylene, Of polyethylene, Not exceeding 0.08 mm in thickness.
	22	Printed, embossed or otherwise surface-worked, except merely polished
	20	Other, Low density
	21	Other, other
		Of polymers of ethylene, Of polyethylene, Exceeding 0.08 mm in thickness:
	25	Printed, embossed or otherwise surface-worked, except merely polished
	40	Other, low density
	41	Other, other
		Of polymers of ethylene, Other:
	51	Exceeding 0.08 mm in thickness
3921		OTHER PLATES, SHEERS, FILM, FOIL AND STRIP, OF PLASTICS
3921.90.90		Other: Other, of polymers of ethylene
	16	Low density polyethylene

Table 1 – General tariff classification for the goods

These tariff classifications and statistical codes may include goods that are both subject and not subject to the original notice. The listing of these tariff classifications and statistical codes is for reference only and do not form part of the goods description.

2.4 The circumvention goods

Cromford Film alleges that some importers are importing slightly modified concrete underlay film into Australia from Malaysia.

The application states that while the Australian market for concrete underlay film is predominantly supplied in 4 metre rolls, there are circumstances where narrower 2 metre rolls and wider 6 metre rolls are preferred. Cromford Film states that following the imposition of the original notice in December 2021, it became aware that some importers were considering importing rolls of concrete underlay film just under the 2 metre width, or just over the 6 metre width. At that time, Cromford Film had no evidence to confirm that importers had commenced importing such widths of concrete underlay film.

As part of its application, Cromford Film provided information and evidence that Davmar Industries Pty Ltd (**Davmar**) has commenced importing and offering concrete underlay film with a width of 1.95 metres, slightly outside the 2 to 6 metre width range covered by the original notice.

For the purposes of this report, the commission has examined Cromford Film's evidence of concrete underlay film with a width of 1.95 metres, which is referred to in this report as the circumvention goods. However, in the application Cromford Film also refer to the potential marketing of concrete underlay film of 6.05 metres, noting that it was unable to provide evidence of this being currently offered in the Australian market. During the course of an inquiry, the commission may expand its examination to other widths of

concrete underlay film (either below 2 metres or above 6 metres) if further evidence is available that such concrete underlay film is potentially a circumvention good.

2.5 Applicant's proposed alterations to the original notice

Section 269ZDBH(1) provides that the Minister may declare alterations to the original notice. Without limiting section 269ZDBH(1), section 269ZDBH(2) provides that the alterations may be of the following kind:

- a) the specification of different goods that are to be subject to the original notice
- b) the specification of different foreign countries that are to be the subject of the original notice
- c) the specification of different exporters that are to be the subject of the original notice
- d) the specification of different variable factors in respect of existing exporters the subject of the original notice and
- e) the specification of variable factors in respect of exporters that are to be the subject of the original notice.

Cromford Film considers that the Minister should alter the goods description of the original notice to deter circumvention of the original notice by the slight modification of the width of the goods. Cromford Film proposes that the Minister alter the description of goods to remove reference to the width of the goods, as follows:

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.

The commission will give further consideration to this issue as the inquiry progresses.

3 CONSIDERATION OF THE APPLICATION

3.1 Introduction

This chapter sets out the commission's consideration of the application.

As discussed in chapter 2.1, under section 269ZDBE, the commission must consider 2 matters in relation to the application:

- whether the application complies with content and lodgement requirements set out in section 269ZDBD (chapter 3.3)
- whether there appear to be reasonable grounds for asserting that one or more circumvention activities have occurred, in this case, whether there has been a slight modification of the goods (chapter 3.4).

For the reasons outlined in chapters 3.3 and 3.4, the commission considers that Cromford Film has satisfied the requirements of these matters and recommends that the Commissioner not reject the application.

3.2 The application

On 27 May 2022, Cromford Film, a member of the Australian industry producing like goods, lodged an application requesting an inquiry into the circumvention of the original notice applying to concrete underlay film exported to Australia from Malaysia.

Pursuant to section 269ZDBE(1), the Commissioner must examine the application and, within 20 days, decide whether to reject the application. As such, the Commissioner must make a decision to reject the application no later than 16 June 2022.

If the Commissioner is not satisfied, having regard to the application and to any other information the Commissioner considers relevant, of either or both of the matters referred to in section 269ZDBE(2), the Commissioner must reject the application.

3.3 Content and lodgement requirements

When considering the requirements of sections 269ZDBD(1) and (2), the commission is satisfied that the application:

- is in writing
- is in the approved form (*Form B1236 – Application for an anti-circumvention inquiry*), and contains such information as the form requires
- is signed and was lodged in an approved manner
- provides a description of the kind of goods that are the subject of the original notice, and describes the original notice the subject of the application
- provides a description of the circumvention activity in relation to the original notice that has allegedly occurred, and
- provides a description of the alterations to the original notice that should be made.

3.4 Reasonable grounds for asserting a circumvention activity

To determine whether there are reasonable grounds for asserting that there has been circumvention activity in the form of a slight modification of the goods, the commission has compared the circumvention goods to the goods, having regard to the factors listed in section 48(2) of the Regulation.

3.4.1 Are circumvention goods exported to Australia from Malaysia?

The application provides evidence that Davmar, whom the commission identified as an importer of the goods from Malaysia in INV 554¹⁰, is marketing rolls of concrete underlay film for sale in Australia in widths of 1.95 metres.¹¹ Cromford Film alleged that import brokers are likely declaring these goods as exempt from the original notice when importing them into Australia.

To determine whether exporters are exporting the circumvention goods into the Australian market, the commission analysed data on declared import consignments from Malaysia as reported in the Australian Border Force (**ABF**) import database.

Figure 1 shows the volume of concrete underlay film exported to Australia from Malaysia from the third quarter of 2021, when the Commissioner published a Preliminary Affirmative Determination in respect of the goods¹², to June 2022.

¹⁰ Davmar importer verification report, EPR 554, Item 16.

¹¹ See p20 Non-confidential Exhibit B and p25 Non-confidential Exhibit C of the application.

¹² The Commissioner published a Preliminary Affirmative Determination (ADN No. 2021/126) on 27 September 2021. Securities were taken in respect of IDD that became payable on the goods exported from Malaysia and entered for home consumption in Australia on or after 28 September 2021.

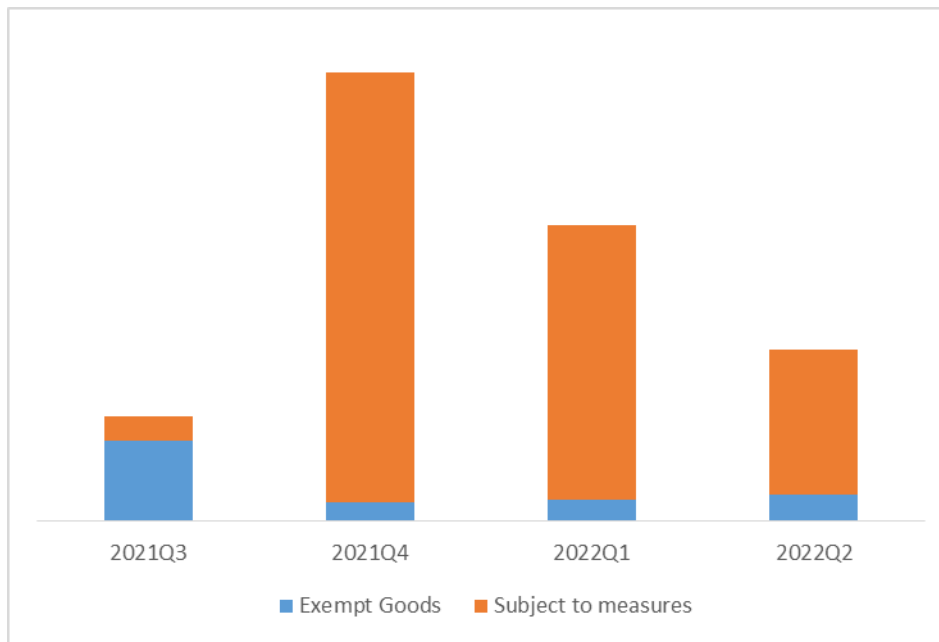


Figure 1 – Concrete underlay film exported to Australia from Malaysia¹³

Figure 1 shows that since the then Minister imposed the original notice, there has consistently been a volume of goods imported into Australia from Malaysia declared as exempt from the original notice.

The commission analysed the data relating to the goods that importers declared as exempt (using exemption code 'GOODS'), including fields relating to importer name, supplier name, volume and goods description. The commission observed that importers often, but not always, included the width, colour and thickness of film for relevant consignments in the goods description field.

The commission identified multiple consignments of goods described as 1.95 metres in width since the original notice. In the 3 years prior, no consignments described goods with a width of 1.95 metres. However, the commission identified that prior and subsequent to the original notice, there were consignments with goods of widths between 2 and 6 metres. This suggests, at this preliminary stage, that importers have commenced importing concrete underlay film with a width of 1.95 metres since the original notice.

Based on the commission's analysis and the evidence provided in the application, the commission considers it reasonable for the applicant to assert that the alleged circumvention goods are exported to Australia from Malaysia.

3.4.2 Are the circumvention goods slightly modified before export?

Cromford Film alleges that the circumvention goods exported to Australia from Malaysia by Davmar are slightly modified. In particular, the alleged circumvention goods have a

¹³ Confidential Attachment 1 – ABF import data analysis.

PUBLIC RECORD

width of 1.95 metres, which is slightly outside the 2 to 6 metre width range of the goods covered by the original notice.

Cromford Film alleges that the circumvention goods and the goods have the same general physical characteristics, with the only difference being the width.

Section 48(3) of the Regulation provides that, for the purpose of determining whether a circumvention good is slightly modified, the Commissioner must compare the circumvention good and the good the subject of the notice. In making the comparison, the Commissioner must have regard to any relevant factor, including a number of factors set out in section 48(3) of the Regulation.

Table 2 provides the commission's preliminary assessment of these factors.

Factor listed under section 48(3) of the Regulation	Commission's preliminary assessment
(a) each good's general physical characteristics	Based on the primary physical characteristics of the circumvention goods and the goods, being the impact resistance and thickness ¹⁴ , the commission considers it is reasonable for the applicant to assert that the general physical characteristics are the same between the circumvention goods and the goods (with the exception of the minor difference in width).
(b) each good's end use	Based on the information the applicant provided relating to the marketing of the circumvention goods in the Australian market ¹⁵ , the commission considers it reasonable for the applicant to assert that the circumvention goods are used for the same end use as the goods, being concrete underlay.
(c) the interchangeability of each good	Cromford Films has provided evidence that Davmar no longer offers the goods at the 2 metre width, and instead sells concrete underlay at the 1.95 metre width. ¹⁶ This suggests that the goods are interchangeable between these widths. Based on the information provided by the applicant, the commission considers it reasonable for the applicant to assert that the circumvention goods and the goods can be used interchangeably.
(d) differences in the processes used to produce each good	Based on the commission's understanding of the production process for the goods, as discussed in REP 554, the commission considers that it is reasonable for the applicant to assert that the circumvention goods and the goods are produced in a similar manner, using similar raw materials and production processes.
(e) differences in the cost to produce each good	The commission does not have detailed information to assess this claim at this stage. However, in INV 554, the commission did not identify any differences in production costs based on width. It is reasonable to assert, at this stage, that there is unlikely to be a material difference in production costs between the goods and the circumvention goods, noting that width is the only difference.

¹⁴ See Non-confidential Exhibit A, p20 Non-confidential Exhibit B and p25 Non-confidential Exhibit C of the application.

¹⁵ See p20 Non-confidential Exhibit B and p25 Non-confidential Exhibit C of the application.

¹⁶ Ibid.

PUBLIC RECORD

Factor listed under section 48(3) of the Regulation	Commission's preliminary assessment
(f) the cost of modification	<p>Cromford Film states that, based on its own manufacturing experience, modifying the width of the film involves a simple adjustment to manufacturing equipment. The only other very slight and simple modification would involve cutting of the 'core' to the desired finished film width.</p> <p>The commission does not have detailed information to assess this claim at this stage, but considers that the basis of the applicant's assertion is reasonable. The commission will further examine this factor during the inquiry.</p>
(g) customer preferences and expectations relating to each good	<p>Cromford Film suggests that there is no reason to import the goods at widths narrower than 2 metres other than to circumvent the original notice and that there is no specific customer demand for the circumvention goods. The commission does not have detailed information to assess this claim at this stage but will examine this factor during the inquiry.</p>
(h) the way in which each good is marketed	<p>Based on the information provided by the applicant relating to the marketing of the goods and circumvention goods in the Australian market¹⁷, the commission considers that it is reasonable for the applicant to assert that the circumvention goods and the goods are marketed in the same manner.</p>
(i) channels of trade and distribution for each good	<p>The commission has analysed the ABF import data (Confidential Attachment 1) and preliminarily considers that the channels of trade and distribution for the goods and the circumvention goods are similar. Along with the information provided in the application, the commission considers that it is reasonable for the applicant to assert that the circumvention goods and the goods share the same channels of trade and distribution.</p>
(j) patterns of trade for each good	<p>Based on the commission's analysis of ABF import data (Confidential Attachment 1), the Commission observes that overall volumes of the goods have decreased since the original notice. The commission did not identify any consignments of goods with a width of 1.95 metres prior to the original notice.</p>
(k) changes in the pricing of each good	<p>Based on its analysis of ABF import data, the commission did not observe a consistent difference in price (once adjusted to account for IDD payable on the goods) between the circumvention goods and the goods (Confidential Attachment 2).</p>
(l) changes in the export volumes for each good	<p>The ABF import data provides only a limited time period for the commission to analyse changes in export volumes of the goods and the circumvention goods. It is also difficult at this stage for the commission to assess whether any changes are a result of the original notice or a result of exporters shifting their volumes to the circumvention goods. However, the commission has identified in its analysis of ABF import data (Confidential Attachment 1) that there is multiple consignments of circumvention goods exported to Australia by Malaysian exporters. The evidence provided in the application also suggests that at least one importer is shifting its purchases of the goods away from goods of a 2 metre width to the circumvention goods at a 1.95 metre width.</p> <p>The commission therefore considers it reasonable for the applicant to assert that there have been changes in the export volumes of each good.</p>

¹⁷ Ibid.

Factor listed under section 48(3) of the Regulation	Commission’s preliminary assessment
(m) tariff classifications and statistical codes for each good	Based on the commission’s analysis of ABF import data (Confidential Attachment 1), the commission observes that the circumvention goods and the goods appear classified to the same tariff subheading and statistical code, indicating that there is little difference between the two.

Table 2 – Comparison of the goods and the circumvention goods

Having regard to the factors listed in Table 2, the commission considers it reasonable for the applicant to assert that the circumvention goods are slightly modified before exportation to Australia.

3.4.3 Is the use or purpose of the circumvention goods the same before, and after, they are so slightly modified?

Cromford Film alleges that the use and purpose of the circumvention goods and the goods is the same.

In its application, Cromford Film provided information pertaining to the marketing of the circumvention goods in the Australian market, including:

- a photo of the 1.95 metre width concrete underlay film marketed as complying with Australian Standard AS2870 which is relevant to the goods
- catalogues from before and after the original notice which indicates a shift from 2 metre width concrete underlay film to 1.95 metre width concrete underlay film.¹⁸

This information indicates that the circumvention goods are marketed for the same end-use applications (residential slabs and footing) as the end-use application of the goods subject to the original notice.

Based on this information, the commission considers it reasonable for the applicant to assert that the use or purpose of the circumvention goods are the same, before, and after they are slightly modified.

3.4.4 Had the circumvention goods not been slightly modified, would they have been the subject of the original notice?

The circumvention goods have a width of 1.95 metres. Cromford Film alleges that, prior to the original notice, goods were exported at a width of 2 metres and that the change in width since the notice is to circumvent the measures on the goods.

Concrete underlay film at a 1.95 metre width does not fall within the description of the goods subject to the original notice. If the width of the circumvention goods had not been slightly modified and had remained at 2 metres, such goods would have been subject to the notice.

¹⁸ Non-confidential Exhibit A, B and C of the application.

PUBLIC RECORD

Accordingly, the commission considers it reasonable for the applicant to assert that, had the circumvention goods not been so slightly modified, they would have been the subject of the original notice.

3.4.5 Does section 8 of the Dumping Duty Act apply to the circumvention goods?

The commission considers it reasonable for the applicant to assert that the circumvention goods do not fall within the description of the goods the subject of the original notice and accordingly, that they are not subject to the dumping duty notice under section 269TG(2), and that section 8 of the Dumping Duty Act does not apply to the export of the circumvention goods to Australia from Malaysia.

3.5 Conclusion

As set out in chapter 3.3, the commission is satisfied that the application satisfies the content and form requirements of sections 269ZDBD(1) and (2).

As set out in chapter 3.4, the commission considers there appear to be reasonable grounds for asserting, under section 269ZDBE(2)(b), that a circumvention activity in relation to the original notice has occurred in the form of a slight modification of the goods, as per the circumstances prescribed in section 48(2) of the Regulation.

Therefore, the commission recommends that the Commissioner not reject the application pursuant to section 269ZDBE(1).

4 CONCLUSION AND RECOMMENDATIONS

The commission has considered Cromford Film's application in accordance with section 269ZDBD. The commission is satisfied, on the basis of the information provided in the application and other relevant information as discussed in chapters 3.3 and 3.4, that:

- the application complies with section 269ZDBD, and
- there appear to be reasonable grounds for asserting that a circumvention activity in relation to the original notices has occurred.

The commission recommends that the Commissioner:

- **not reject** the application and initiate an anti-circumvention inquiry in relation to the original notice applying to concrete underlay firm exported to Australia from Malaysia and
- **examine** the period from 1 July 2019 to determine whether a circumvention activity has occurred.

5 APPENDICES AND ATTACHMENTS

Confidential Attachment 1	ABF import data analysis
Confidential Attachment 2	Davmar price analysis