

## PUBLIC RECORD

### ANTI-CIRCUMVENTION INQUIRY NO. 606

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

##### Australian industry questionnaire

**Due date: 1 August 2022**

#### 1. Introduction

On 16 June 2022, the Anti-Dumping Commission (**the commission**) published *Consideration Report No. 606 – Anti-circumvention Inquiry into Concrete underlay film exported from Malaysia (CON 606)*.

CON 606 followed an application from LCM General Products Pty Ltd, trading as Cromford Film (**Cromford Film**) for an anti-circumvention inquiry in relation to concrete underlay film exported to Australia from Malaysia.

Cromford Film alleged that some importers of the goods have been importing slightly modified goods from Malaysia to circumvent the dumping duty notice applying to the goods. Specifically, that the goods exported to Australia have been slightly modified to a width of 1.95 metres, so as to slightly fall outside of the 2 to 6 metre width range covered by the goods description in the notice.

Further information on this inquiry is available in CON 606 and Anti-Dumping Notice No. 2022/054, available on the commission's website.

#### 2. The goods and the circumvention goods

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.*

For the purposes of the following questions, 'circumvention goods' is used to describe goods with a width less than 2 metres or more than 6 metres.

#### 3. Legislative basis

The *Customs Act 1901 (Cth) (the Act)* sets out, among other things, the procedure to be followed by the Anti-Dumping Commissioner (**the Commissioner**) in assessing applications for an anti-circumvention inquiry and preparing a report for the Minister on an anti-circumvention inquiry.

Section 269ZDBB(6) of the Act and sections 48(2) and 48(3) of the *Customs (International Obligations) Regulation 2015 (the Regulation)* set out the circumstances in which the Commissioner determines whether a circumvention goods is slightly modified. Section 48(3) of the Regulation includes a list of factors to which the Commissioner is to have regard.

In preparing this questionnaire, the commission has had regard to those factors.

#### 4. Completing this questionnaire

There is no requirement to complete this questionnaire. Nor are you required to answer every question. However, if you do not respond, do not provide all of the information sought, do not provide information within a reasonable time period, or do not allow the commission to verify the information (if required), the commission may have regard to any other matters or information that it considers relevant.

## PUBLIC RECORD

Alternatively, you may wish to make a submission concerning the inquiry, no later than 1 August 2022. Instructions on making a submission are in Anti-Dumping Notice No. 2022/054.

In answering the questions, please provide supporting evidence if available.

### 5. Confidential and non-confidential responses

You are required to lodge a confidential version (for official use only) and a non-confidential version (for public record) of your response to this questionnaire. Please ensure that each page of information you provide is clearly marked either 'FOR OFFICIAL USE ONLY' or 'PUBLIC RECORD'.

All information provided to the commission in confidence will be treated accordingly. The public record version of your questionnaire will be placed on the public record, and must contain sufficient detail to allow a reasonable understanding of the substance of the information, but does not breach confidentiality nor adversely affect those interests.

A person is not required to provide a summary for the public record if the commission can be satisfied that no such summary can be given that would allow a reasonable understanding of the substance of the information.

All questionnaires are required to have a bracketed explanation of deleted or blacked out information for the public record version of the questionnaire. An example of a statement to accompany deleted/blacked out text is:

*[Explanation of cost allocation through the divisions, by reference to machine hours or weight].*

If such an explanation is not provided, the commission may disregard the information.

### 6. Questions under section 48(3) of the *Customs (International Obligations) Regulation 2015*

|     | Question  | Response   |
|-----|---|--|
| (a) | Other than width, what are the differences in the general physical characteristics of the goods and the circumvention goods?  | There does not appear to be any difference between the other physical characteristics between the goods and circumvention goods.   |
| (b) | What is the difference in the end use of the goods and the circumvention goods? i.e. How does width (in particular minor variations from a standard width, for example a 5cm variation from a standard width of 2m) affect the end use of concrete underlay film? | We are confident that the alleged circumvention goods are being marketed for the same end use applications. The width being marketed now at 1.95m is a 2.5% variance vs the 2.0m film it replaced and so presented with a significant saving it would not be hard to convince a customer to purchase instead of 2m film. The same would exist for a 6.0m film made slightly over size where a potential 2-3% gain in material cost could be significantly outweighed by not attracting the 11.4-23.2% duties imposed on the total cost of the product. |

PUBLIC RECORD

|            |   |  |
|------------|---|--|
| <p>(c)</p> | <p>Can a customer readily interchange between the goods and the circumvention goods? i.e. Can one width of concrete underlay film be interchanged with another?</p>   | <p>A 2m, 4m or 6m film can be readily changed between, it ultimately comes down to the installer's preference – less width does mean more joints but can also be more beneficial in smaller areas of a concrete pour. There is no change required to the installation process.</p> <p>For industrial applications of the same film – it would be hard to imagine that a slightly narrower film would present an issue, nor would a slightly wider film present an issue with a 6m film.</p>  |
| <p>(d)</p> | <p>What are the differences in the processes to produce the goods and the circumvention goods? i.e. Is there a different process to produce concrete underlay film of different widths? Is there natural variation in the width of products manufactured to a target width? If so, do manufacturers generally undertake any further effort to standardise the width, i.e. trimming excess product that is too wide or extra flattening or rolling for product that is too thin?</p> | <p>A 2.0m wide through to 6.0m wide can all be manufactured on the same blown film line. For example, 2m film can be run 'two-up' where the bubble size is the same as 4m film but cut in the middle to make two rolls at once. The minimal 2.5% variance in thickness on the alleged product can be manufactured on the same machinery with ease – refer to confidential video.</p> <p>As most concrete underlay films are manufactured using recycled materials (this was verified in ADC554 where there were claims made around the sustainably sourced raw materials of Malaysian manufacturers), there is the potential for variation during production which could affect the actual width slightly.</p> <p>We can only comment on the practices of Cromford Film, who will target the nominal width as the minimum actual thickness [REDACTED]</p> <p>[REDACTED] <b>[Cromford production details]</b>, the finished product is sold as 2m rolls as this is the roll width intended to be manufactured. This contrasts to the circumvention goods that appear to be manufactured to this specific width and then marketed and sold as 1.95m roll, with the only real benefit being the ability to avoid the imposed dumping duties.</p> <p>Further trimming of the product would be impractical given the commodity nature of concrete underlay films.</p> |

**PUBLIC RECORD**

|     |   |   |
|-----|---|---|
| (e) | What are the differences in the costs to produce the goods and the circumvention goods? i.e. Is there a difference in cost to produce concrete underlay film of different widths on a per m basis?          | The difference in cost to produce these goods would be a function of raw material input cost only. For example, if the product is 1.95m wide instead of 2.0m wide, but roll length and thickness were the same, the raw material costs could be calculated as a function of the amended Width (1.95m vs 2.0m) x Length x Thickness – reference to this calculation can be found in ADC 554. The resulting cost difference would be approx. 2.5% based on 1.95m film instead of 2.0m film.   |
| (f) | (i) What modifications to the goods and/or the plant use in manufacturing the goods are required to produce the circumvention goods?<br>(ii) What is the cost to make these modifications?                  | No modification is required – see attached confidential video showing Cromford targeting 1.95m width during 2m run.   |
| (g) | What are customer’s preferences and expectations relating to the goods versus the circumvention goods? In your view, would a customer notice the difference between a 2m width product and a 1.95m product? | <p>The difference in m2 coverage of a 1.95m film vs a 2.0m film would be negligible in the primary application of concrete underlay applications, the square meter coverage of a 2x50m roll vs 1.95x50m roll would be 2.5% with potentially a significant price difference of between 11.4-23.2% depending on the exporter.</p> <p>For other non-concrete underlay applications that the product may be used for – for example protecting a piece of equipment in storage, the industrial nature of the film would mean we believe it unlikely a small difference in width would be noticeable or once again in the face of potentially large savings be a reason not to use the 1.95m or &gt;6m film if offered.</p> |
| (h) | What is the difference in how the goods are marketed compared to the circumvention goods? i.e. Is there a difference in how the different widths of concrete underlay film are marketed?                    | We believe they are being marketed the same as existing black builders film products (the goods). In the Davmar Industries example the 1.95m film replaced 2m film in their catalogue earlier this year, which coincided with the imposition of the dumping measures.   |
| (i) | Are there differences in channels of trade and distribution for the goods and the circumvention goods? i.e. Do different widths of concrete under film have different trade and distributions channels?     | In both instances, the alleged circumvented goods have been identified at existing distributors of the goods. Based on our information, and the marketing brochure provided, we believe that the 1.95m film has simply replaced 2.0m film as part of their offering. We are not aware of any specific products being offered to the market in 1.95m width prior to the investigation.   |

**PUBLIC RECORD**

|     |  |  |
|-----|--|--|
|     |  | This is the same with the alleged product being imported over the width of 6.0m as well.   |
| (j) | Are there differences in patterns of trade for the goods and the circumvention goods? i.e. Do different widths of concrete under film have different trade patterns?                                 | As above, no difference in trade patterns other than these are not products we have been aware of prior to the dumping duties being imposed on 2-6m wide film.   |
| (k) | Are there differences in the pricing for the goods and the circumvention goods? What about on a per unit (kg) basis? i.e. Does the pricing for concrete underlay film change depending on the width? | <p>In the Davmar brochure the 1.95m wide film products are being offered at a comparable pricing on a pro-rata basis. It is impossible to understand what direct deals are being done for the product.</p> <p>However, it is reasonable to assume that by avoiding the interim dumping duties, importers are:</p> <ul style="list-style-type: none"> <li>a) likely continuing to import concrete underlay film at dumped prices, and/or</li> <li>b) likely to continue to be undercutting industry's price of like goods.</li> </ul> |
| (l) | Are you aware of any changes in export volumes of the goods compared to the circumvention goods?   | Not other than the information provided by the ADC in the consideration report.  |
| (m) | Are the circumvention goods classified under a different tariff classification and statistical code compared to the goods?   | Not to the best of our knowledge as the current tariff classifications do not contemplate the width of the product, only material composition and thickness.   |

**7. Other questions**

|    |  |   |
|----|--|---|
| A1 | Your application notes that there is an Australian Standard AS2870 for concrete underlay film. Provide details of any requirements in AS2870 (or any other applicable standard) with regards to width.   | There is no requirement under AS2870 around width. AS2870 contemplates the functional performance of the product as a vapour barrier or damp proofing membrane which specifically relates to strength through impact performance and thickness. |
| A2 | Do you produce the goods to a nominal, or actual width? If nominal, is there a tolerance that you or the Australian market in general allow? At what variance from the nominal/actual width would you or the Australian market generally consider the goods to be defective/non-prime? | <p>Cromford Film [REDACTED]<br/>[REDACTED] <b>[Cromford production details]</b><br/>– refer to confidential video.</p> <p>The product would not be rendered defective/non-prime if narrower or wider than the target width.</p>                 |

**PUBLIC RECORD**

|    |   |  |
|----|---|--|
|    |   | Importantly, irrespective of the width tolerance, the finish goods are marketed and sold as 2m width rolls, which contrasts to the clear intent of importers to import and sell 1.95m rolls for the purposes of avoiding interim dumping duties. |
| A3 | How do you calculate pricing for concrete underlay film? Is there a consistent price per kg or m, or some other method? | Pricing for concrete underlay is calculated [REDACTED]: <ul style="list-style-type: none"><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li></ul> <b>[Cromford pricing methodology]</b>   |

**8. Any other information**

Please provide any other information that you consider could assist the commission in its inquiry.

During the application process for Investigation 554, Cromford were asked by the ADC to consider whether the goods description was so broad as to unnecessarily implicate other 'non-competing products' in the investigation.

Given that the market has always purchased within 2.0m and 6.0m widths and given the broad coverage of various film products falling within the relevant tariff classifications, Cromford wanted to be specific with the goods description to ensure that the dumped goods would be properly covered by measures, whilst at the same time ensuring that other film products not considered to be concrete underlay film were not unfairly impacted by the measures.

In hindsight, had we known that within such a short time frame of the duties being imposed some exporters/importers would begin importing these modified goods specifically designed to circumvent the measures imposed, we would have considered a broader width description.

By way of example, Cromford notes the recent submission by Bunnings Ltd in which they caution against removing the width criteria from the goods description, which would in their view unfairly target film of narrower widths (less than 1m). Cromford understands Bunning's concerns, which is precisely why the goods were defined to target the dumped imports causing material injury. Again, Cromford does not wish for non-competing products to be unnecessarily covered by the measures.

After further consideration, Cromford proposes that if the Commission finds that circumvention has occurred by way of modified goods, it would be reasonable to extend the width criteria within the goods description, to cover film ranging from 1m to 7m inclusive. This would allow for non-subject film products under 1m to be exempt from measures. Whilst there still remains some potential for further modification of widths beyond 1m and 7m, it is highly unlikely that the end-user market (concreters) would accept narrower rolls of less than 1m, and producing film in widths greater than 7m film would result in heavier finished products that are likely to also be impractical to handle on site.