

PUBLIC RECORD

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The Director, Investigations 3
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601
By email: investigations3@adcommission.gov.au

Continuation Inquiry No. 696: certain concrete underlay film exported to Australia from
Malaysia

Submission in response to the Statement of Essential Facts (SEF 696)

Dear Director,

This submission is made by LCM General Products Pty Ltd, trading as Cromford Film (Cromford), the applicant for the continuation of the anti-dumping measures applying to certain concrete underlay film (the goods) exported to Australia from Malaysia. It responds to the Statement of Essential Facts in this inquiry (SEF 696).

Cromford supports the Commissioner's preliminary conclusion that the expiry of the measures would be likely to lead to a continuation or recurrence of dumping and the material injury that the measures are intended to prevent, and the proposal to continue the measures.

1. The expiry of the measures would be likely to lead to a recurrence of dumping and material injury

The test the Commissioner must apply at this stage is in s.269ZHF(2). The Commissioner "must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent". The question is prospective. It asks what would be likely to happen if the measures were removed, and it is directed to the injury the anti-dumping measure is intended to prevent, which is a different question from how the industry is faring while the measures remain in force.

Dumping is likely to continue or recur

The recurrence of dumping has been established, with the Commission finding that Great Cosmo Industries Sdn Bhd (GCI), the only cooperating exporter, dumped the goods during the inquiry period at a margin of 16.7%, and that the uncooperative and all other exporters dumped at 63.6%.

Dumping did not stop under the measures. It continued throughout their life, at margins comparable to those found in the original investigation.

The point is reinforced by conduct the Commission has already found. There have been two separate findings of circumvention of the measures, one by modifying the width of the film and one by modifying its colour. Exporters who modify the goods to move outside the scope of a notice, rather than raise their prices, demonstrate a continuing intent to supply the Australian market at low prices. That intent does not evaporate if the measures are removed. It is the clearest possible evidence that dumping and material injury would recur.

Material injury would be likely to recur, and the industry's improvement does not show otherwise

The Commissioner's reasoning on this point is correct. The SEF finds that Cromford's increased sales "are consistent with the measures having been effective", and that the improved performance of the Australian industry "does not indicate that injury would not recur if the measures were removed, but rather, is indicative of the fact that absent the measures, lower priced imports from Malaysia would likely regain a competitive advantage". That is the accepted approach to a continuation inquiry. The statutory question is directed to the injury the measures are intended to prevent, so the fact that the measures are working cannot be a reason to remove them.

The Ministerial Direction on Material Injury 2012 supports the Commissioner on this point in two ways. It directs that an industry "which at one point in time is healthy and could shrug off the effects of the presence of dumped products in the market, could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping". It also directs that it is possible to find material injury "where an industry suffers a loss of market share in a growing market without a decline in profits".

The SEF records that Cromford's market share remained relatively unchanged while the market grew by 22.3%, and that its prices remained relatively flat in a way that may have constrained its ability to recover rising costs. The relevance of these findings is that a static share in a growing market, and flat prices against rising costs, are the conditions in which injury would re-emerge quickly once the price discipline of the measures is removed.

The shift in import share to non-subject countries does not break the causal link

The SEF records that the Malaysian share of imports fell from 87.9% to 44.4% over the life of the measures, that the market grew, and that imports from non-subject countries, particularly Vietnam, gained share. Importers and exporters may use those findings to argue that any competitive pressure on Cromford comes from Vietnam, a non-subject source, and not from dumped Malaysian goods, and that the recurrence of injury therefore cannot be attributed to Malaysia. Cromford asks the Commissioner to address that argument directly in the final report, because the evidence already answers it.

The non-attribution principle does not assist the exporters here. Article 3.5 of the Anti-Dumping Agreement requires that "the injuries caused by these other factors must not be attributed to the dumped imports", and lists among the relevant other factors "the volume and prices of imports

not sold at dumping prices". That is a direction not to attribute to Malaysian dumping any injury that non-subject imports are in fact causing. It is not a direction to treat the presence of a non-subject competitor as severing the causal link where dumped imports would, on removal of the measures, themselves cause injury. The Ministerial Direction makes the same point with "dumping or subsidisation need not be the sole cause of injury to the industry".

The SEF shows the risk of dumping recurring comes from Malaysia, not Vietnam. Malaysian and Vietnamese free-on-board export prices are closely aligned, and in at least one quarter the Vietnamese price was lower. Malaysia therefore already competes at the same price levels as the source that displaced it. If the measures expire, Malaysia would resume competing on price immediately, without needing to undercut any new entrant.

The measures have also already driven specific behaviour. Malaysian exporters have twice modified the goods to get around the measures, have kept their distribution links with Australian customers, and have been joined by new Malaysian suppliers while the measures were in place. Suppliers not covered by the measures had no reason to act this way. The exporters who fought to keep low-price access to this market are the Malaysian ones, and they are the ones whose dumping the measures seek to address.

2. The variable factors for uncooperative and all other exporters

All exporters other than GCI are correctly treated as uncooperative

The Commissioner correctly determined that every Malaysian exporter other than GCI is an uncooperative exporter for the purposes of this inquiry. An uncooperative exporter includes one who "did not give the Commissioner information the Commissioner considered to be relevant ... within a period the Commissioner considered to be reasonable". The consequence is that the export price and normal value for these exporters are to be worked out under s.269TACAB(1), having regard to all relevant information.

For the export price, s.269TAB(3) directs the Commissioner to "such amount as is determined by the Minister having regard to all relevant information". The Commission determined the export price using the lowest weighted average export price, by model and quarter, of a large non-cooperating exporter as recorded in the Australian Border Force import database, rather than GCI's higher export price. Cromford supports that choice.

The basis is sound on the SEF's own findings. The two largest uncooperative exporters accounted for approximately 61% of Malaysian exports during the inquiry period and both exported at prices materially below GCI's. A figure built on GCI's price alone, or a weighted average across all exporters that is lifted by GCI's higher-priced and lower-volume sales, would therefore overstate the prices at which the uncooperative segment actually supplies the Australian market. The lowest weighted average is not the most adverse number selected for its own sake. It is the number that most accurately reflects the pricing of the exporters to whom the rate will apply, which is what s.269TAB(3) requires.

The normal value under s.269TAC(6)

For the normal value, s 269TAC(6) likewise directs the Commissioner to "such amount as is determined by the Minister having regard to all relevant information". The Commission used the normal value established for GCI, because it is the only contemporary, verified normal value on the record and the Commission held no specific information for the uncooperative exporters. That is the correct course. The result, a dumping margin of 63.6%, is not a penalty. It follows from the exporters' own choice not to provide the information from which an individual margin could have been built. As Annex II to the Anti-Dumping Agreement records, where an interested party does not cooperate "this situation could lead to a result which is less favourable to the party than if the party did cooperate".

The abolition of the four exporters' individual rates

The SEF removes the individual rates set in the original investigation for L&L Trading Enterprise Sdn Bhd, Unistar Industries Sdn Bhd, Plastik V Sdn Bhd and JL Plastic Industries Sdn Bhd, and applies to them the uncooperative and all other exporters rate. Cromford supports that step. None of those exporters cooperated in this inquiry, so there is no current, verified information from which the Commissioner could be satisfied that their original variable factors remain appropriate.

3. The form of measures

The Commissioner proposes to retain the ad valorem method. The reason given is that the factors that led to ad valorem in the original investigation are unchanged, and that although there has been circumvention, "that activity was related to the slight modification of the goods, not through shifting responsibility for exports between related companies". With respect, that reasoning treats a complex related-party structure as the gateway to a combination duty. Related-party dealing is only one of two independent circumstances that make a combination duty suitable, and the other is present here in the clearest terms.

The Guidelines make the likelihood of circumvention an independent basis for a combination duty

The Commission's own Guidelines on the Application of Forms of Dumping Duty state that the combination method "is suited to circumstances where there are complex company structures with related parties; and where circumvention of measures is likely".¹ The two limbs are disjunctive. A likelihood of circumvention is a basis for the combination method whether or not there are related parties. The Guidelines then address circumvention by modification of the goods, in their discussion of the fixed and combination forms, "Where such circumvention is identified this may be reason to change the form of duty, for example from ad valorem duty to fixed duty".² The circumvention the SEF treats as a reason to keep ad valorem is, on the Guidelines' own text, a reason to change it.

The rationale is that a combination duty removes the incentive to compete by lowering the export price. The Guidelines explain, with a worked example, that there is "no incentive for an exporter to lower their prices to avoid the imposition of dumping duties when a combination duty is used",

¹ Guidelines on the Application of Forms of Dumping Duty, November 2013, p 4.

² Ibid., p 10.

because as the actual price falls the variable component rises to collect the difference.³ An ad valorem duty does the opposite, which the Guidelines note that it "has a potential disadvantage in that export prices might be lowered to avoid the effects of this duty".⁴ In a market the SEF finds to be highly price sensitive, in which Cromford has considerable regard to import prices when setting its own, that disadvantage is not theoretical.

Cromford acknowledges that the Guidelines, in their discussion of the combination method, also tie the price-manipulation rationale to "complex related party company structures, or a proven case of price manipulation".⁵ That passage does not narrow the separate circumvention limb on page 4, or the express statement on page 10 that identified circumvention may be a reason to move from ad valorem to a fixed or combination form. Read as a whole, the Guidelines treat a proven likelihood of circumvention as a sufficient basis in its own right.

The Commission has applied the combination method to slight-modification circumvention without related parties

The Commission has done exactly what Cromford asks here. In Report No. 479 it changed the form of the measures "from the ad valorem duty method to the combination of fixed and variable duty method" in response to a slight-modification circumvention, an edge treatment of clear float glass, with no finding of related-party price shifting.⁶ Its reason was that "the behaviour of parties to circumvent the anti-dumping measures heightens the risk of future anti-circumvention activities", and that the slight modification of goods is one of the trade strategies "that result in a reduction of the effectiveness of the anti-dumping measures".⁷ The Commission reached the same conclusion in Report No. 483, retaining a combination duty because the circumvention "heightens the risk of future anti-circumvention activities".⁸ In each case the operative fact was a finding of circumvention by modifying the goods, with no related-party structure in play, and that is the position here, twice over.

Ad valorem has not disciplined the decision to dump over the life of the measures

The one exporter whose data the Commission has verified proves the point. In the original investigation the Commission found Great Cosmo dumping at a margin of 17.2%.⁹ Nearly five years of ad valorem measures later, the Commission preliminarily finds Great Cosmo still dumping, now at 16.7%. The margin has barely moved. The interim duty Great Cosmo actually pays has risen, from 14.2% to 16.7%, but that reflects the fact that the lesser duty rule does not apply in this inquiry, the non-injurious price not being the operative measure, rather than any increase in its dumping. The underlying margin is essentially what it was at the outset. The ad

³ Ibid., p 7.

⁴ Ibid., p 11.

⁵ Ibid., p 7.

⁶ Report No. 479, Anti-circumvention inquiry into the slight modification of clear float glass from Thailand, section 6.5.3, pp 43-44.

⁷ Ibid., section 6.5.3, pp 43-44.

⁸ Report No. 483, Anti-circumvention inquiry into the slight modification of wire rope from South Africa, 21 June 2019, section 6.3.2, p 46.

⁹ Report No. 554, Concrete underlay film exported from Malaysia, 17 November 2021, section 6.4.7, Table 12, p 54.

valorem form has not disciplined Great Cosmo's dumping across the life of the measures, and there is no reason to expect it to do so over the next five years.

The reason is structural, and it is why the form of duty matters. An ad valorem duty is a fixed proportion of the actual export price, so the amount collected falls as the export price falls. An exporter that lowers its export price to compete widens its margin of dumping while the amount of duty paid decreases consistent with the fall in the price, so the ad valorem measure is least effective, precisely when the dumping is at its worst.

At 16.7% ad valorem, a reduction in Great Cosmo's export price reduces the duty collected on each shipment by the same proportion, leaving the price gap the measure is meant to close to widen unchecked. A combination duty reverses that. Its fixed element is set against an ascertained export price, and where the actual price falls below that level the variable element collects the difference, so the duty rises as the price falls. For an exporter already shown to be dumping at around 17% throughout the life of the measures, and for a body of uncooperative exporters whom the Commission found to be pricing materially below Great Cosmo, that is the protection the measures require.

Circumvention demands the combination method

Two separate circumvention activities have been found to have taken place during the life of a single measure, by two different modifications of the goods, each requiring an anti-circumvention inquiry and an amendment of the goods description to address them. Those amendments operate only from the date each inquiry was initiated, so each episode left a period during which duty was avoided altogether. Whilst a combination duty does not prevent a further modification of the goods, it does remove the incentive to compete by lowering the declared export price, which is the other way in which the effectiveness of an ad valorem measure is eroded in a price-sensitive market. With clear evidence of a sustained determination to bypass the measures, and in which every exporter but one declined to cooperate, the combination method is the form of duty that keeps the measures effective and ensures integrity of the system.

The Guidelines' cautions about the combination method are met

The Guidelines caution that a combination duty can become punitive in a falling market, and that it may not suit a product with many models at widely differing prices. Neither of these are relevant in this case.

The falling-market caution relates to the ascertained export price on which the variable element of a combination duty is based. That price is "based on data that is already ageing at the time measures were imposed", so in a falling market it can hold export prices above the level the market would otherwise reach, and the Guidelines accept that the duty can then "become punitive". This is not a falling market. Cromford's evidence at initiation, including Platts polymer price data, showed the price of polyethylene resin, the principal raw material for the goods, rising, and the SEF records that the Australian industry's prices remained relatively flat while its costs increased. The pressure on prices in this market is upward, so the ascertained export price is unlikely to sit above the prices the market would otherwise set, and the risk the caution addresses does not arise.

The many-models concern does not arise on goods the Commission has described by a narrow model control code structure of three impact grades and two thickness bands. Any excess duty collected in a particular shipment remains recoverable through the duty assessment process, so no importer is prejudiced by the change.

4. Response to GCI's submission

GCI lodged a submission on 22 September 2026 that responds to Cromford's submission of 16 September 2026 and addresses the methodology for calculating its normal value. The Commissioner did not have regard to it in preparing the SEF, but will have regard to it in preparing the final report. Cromford responds to the points that are relevant to the final report.

Profit must be worked out under regulation 45(2)

GCI submits that, for the profit in its constructed normal value, "Regulation 45(2) is not the appropriate methodology", that "Regulation 45(3)(c) should apply", and that profit should be determined "as a derivative of Great Cosmo's audited financial statements for the 2025 financial year". The Commission constructed GCI's normal value with "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". Cromford submits that the Commission was right, and compelled to do so.

Regulation 45(2) of the Customs (International Obligations) Regulation 2015 provides that the Minister "must, if reasonably practicable, work out the amount by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade". Regulation 45(3) is engaged only "[i]f the Minister is unable to work out the amount by using the data mentioned in subsection (2)". The Minister was able to in these circumstances. Article 2.2.2 of the Anti-Dumping Agreement requires the same, with the amounts for profit "shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation".

GCI's reason for departing from regulation 45(2) is low volume. It says the identical models sold in the ordinary course of trade "do not provide sufficient volume to adequately reflect domestic market conditions". Volume is not a condition of regulation 45(2). The Commission's Manual is explicit, "The profit so calculated under the primary method of Regulation 45(2) can pertain to sales of like goods that have occurred in low volumes. The only requirement is that they have been made in the ordinary course of trade."¹⁰

GCI conflates two different tests. The 5% sufficiency threshold decides whether domestic selling prices can be determined under s.269TAC(1). GCI's domestic sales did not meet that test, and that is why the Commission constructed normal values under s.269TAC(2)(c). The threshold says nothing about which profit regulation 45 requires once the normal value is being constructed.

GCI also says that its black film is sold domestically only "in atypical circumstances" and is "generally not sold in OCOT". That is contrary to the Commission's verified findings. Having

¹⁰ *Dumping and Subsidy Manual*, December 2021, p 38.

assessed each of GCI's domestic sales, the Commission "found that all but one of the sales ... was in the OCOT". It also found GCI's domestic sales of like goods to be arm's length transactions. Therefore, the data that Regulation 45(2) requires to be used, has been verified, and was used.

The figure GCI proposes would not serve the purpose it invokes, "the best estimate possible of a fair market price in the domestic market". GCI's domestic sales of like goods were less than 5% of the volume of its exports to Australia alone, so a profit taken from its company-wide accounts would be driven overwhelmingly by its export business and by products outside the goods. The Commission's stated practice under regulation 45(3)(a) is that it "will not use the profit reported in an income statement where the income statement includes goods that are not in the same general category, or if the income statement includes export sales".¹¹ The same reasoning goes against the audited accounts Great Cosmo puts forward.

The point matters beyond GCI. The Commission used GCI's normal value as the normal value for uncooperative and all other exporters. Any reduction in GCI's normal value from a change in the profit method would flow through to the 63.6% rate that applies to every other Malaysian exporter. Cromford asks the Commissioner to confirm the regulation 45(2) profit.

Colour does not distort the like goods or the injury analysis

GCI submits that colour is "a preference rather than a requirement", that "[a]ny CTMS variance attributable to colour is negligible", and that narrowing the goods or the analysis to black film risks "an artificial construction of injury".

The Commission identified GCI's domestic like goods as "black underlay film (no grey colour was identified)", and noted that Great Cosmo also sells other colours "outside the scope of the goods description". GCI says it "does not seek to disturb the Commission's findings in relation to like goods".

The colour difference is not negligible. In assessing GCI's own data, the Commission "identified a raw material price premium associated with producing certain colours of the plastic (such as orange, opaque, clear, etc.)", and required GCI to break down its domestic costs by colour. It also "identified price differences (premiums) between certain plastic colours (non-goods)" in GCI's domestic and Australian sales data. Those are findings on verified data, including GCI's own. They explain why other-coloured film cannot stand in for the like goods, and they have nothing to do with any colour preference in Australia.

The form of duty: GCI's floor price alternative

GCI submits that a combination duty "can operate in a manner that is punitive in effect", that it is not appropriate for a cooperating exporter, and that the Commission should adopt "a floor price set at the Non-Injurious Price (NIP)".

GCI's submission accepts the concern "that, under an ad valorem duty, a party may lower prices and thereby lower the duty payable", and says a floor price "removes that incentive". That is the

¹¹ Ibid., p 39.

reason Cromford has given for moving away from the ad valorem method the SEF proposes. The only remaining question is which price-based form should replace it.

A floor price set at the NIP is not available on the SEF's findings. The Commission found that the NIP "was not less than the normal value for any exporters from Malaysia and accordingly, the NIP cannot be the operative measure". The floor price method in the Regulation works out "the difference between: (a) the export price of the particular goods; and (b) the normal value of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice". As the Guidelines put it, "[t]he floor price is either the normal value or the non-injurious price, whichever becomes applicable under the duty collection system".¹² On the SEF's findings that is the normal value.

A floor price is also the weaker form in this market. The Guidelines record that "there is the potential for measures involving a floor price to become ineffective in removing the injury when prices are rising", because "the normal value and export price can exceed the floor price".¹³ A combination duty with its fixed element set as a proportion of the ascertained export price keeps its effective rate as prices rise, and its variable element meets any reduction in price. It works in both directions. A floor price works in one.

GCI's cooperation is recognised where the Act recognises it, with an individual margin of 16.7% compared to the 63.6% margin for all other non-cooperating exporters. The form of duty is not a penalty for non-cooperation. The Guidelines treat it as a question of fit, with every form having "the purpose of removing the injurious effects of the dumping", but "certain forms of duty will better suit the particular circumstances of some dumping cases more so than other forms of duty".¹⁴ For GCI the fixed element would rest on its own verified export price. And no form of duty can, in the end, collect more than the margin, where "if excess duty is collected procedures operate to refund that excess. This is the case no matter what form of duty applies."¹⁵

That also answers GCI's broader submission that trade remedies must remedy harm rather than suppress competition. The Commission has found Great Cosmo dumping at 16.7% on its own data, and that dumping has persisted under ad valorem measures.

If the Commissioner prefers to treat GCI differently from other exporters, the Guidelines allow it with "some exporters may be subject to one duty method, such as a floor price duty method, while other exporters (even from the same country) can be subject to another duty method".¹⁶ In that event the combination method should at least apply to uncooperative and all other exporters. The Commission cannot see their prices, and they include an exporter found to have exported circumvention goods while already subject to the all-other exporters rate.

5. Response to JL Plastic's submission

¹² *Guidelines on the Application of Forms of Dumping Duty*, November 2013, p 8.

¹³ *Ibid.*, p 8.

¹⁴ *Ibid.*, p 2.

¹⁵ *Ibid.*, p 2.

¹⁶ *Ibid.*, p 14.

JL Plastic's request for a Ministerial direction

The first request in JL Plastic's letter is that the Minister for Trade and Tourism "[d]irect the Anti-Dumping Commission to reassess the proposed rates against the lesser duty rule and the demonstrated lack of price movement under existing duties". The request asks a Minister to do something Part XVB does not permit, and that the Commissioner could not act on without exposing the final report to challenge.

First, the letter is addressed to the wrong Minister. The Minister for the purposes of this inquiry is the Minister for Industry and Innovation and Minister for Science.

Even that Minister's power to direct the Commissioner is confined. Section 269TA allows the Minister, "by legislative instrument", to give the Commissioner "such directions in connection with carrying out or giving effect to the Commissioner's powers and duties under this Part as the Minister thinks fit". It then provides that such a direction "shall not deal with carrying out or giving effect to the powers or duties of the Commissioner in relation to a particular consignment of goods or to like goods, to goods in a particular consignment but shall deal instead with the general principles for carrying out or giving effect to the Commissioner's powers". A direction to reassess the rates proposed for particular exporters in a particular inquiry is not a statement of general principle, and JL Plastic does not suggest that any legislative instrument is in contemplation.

The recommendation is the Commissioner's own. The Commissioner "must not recommend" continuation "unless the Commissioner is satisfied" of the matters in s.269ZHF(2). The Commission's Manual sets out the grounds on which the exercise of such a power may be reviewed. It reproduces s.5(2) of the *Administrative Decisions (Judicial Review) Act 1977*, under which the improper exercise of a power includes "an exercise of a personal discretionary power at the direction or behest of another person", and "taking an irrelevant consideration into account in the exercise of a power".¹⁷ A final report whose rates had been reassessed at a Minister's direction, rather than on the Commissioner's own assessment of the evidence, would be open to challenge on both grounds.

Cromford therefore asks the Commissioner to treat the request for a Ministerial direction as raising nothing the final report can act on.

What JL Plastic does not say

JL Plastic describes the rate proposed for uncooperative and all other exporters, which would now apply to it, as "a punitive 63.6%", up from its current rate of 20.1%. The figures are right. What the letter leaves out is why the rate applies to JL Plastic at all.

The Commission sent exporter questionnaires to the three largest Malaysian exporters and placed the questionnaire on its website for any other exporter to complete. Apart from Great Cosmo Industries Sdn Bhd (GCI) and Solary Sdn Bhd, whose response was found deficient, "[n]o other

¹⁷ *Administrative Decisions (Judicial Review) Act 1977* (Cth) s 5(2)(a) and (e), as reproduced in *Dumping and Subsidy Manual*, December 2021, p 6.

exporters provided a completed REQ". The Commissioner therefore considers "all exporters from Malaysia, other than GCI, to be uncooperative exporters for the purpose of this inquiry". JL Plastic is one of them.

JL Plastic knows the process. In the original investigation it lodged an exporter questionnaire response, the Commission verified it remotely, and it received an individual dumping margin of 21.9%. Even then, the Commission was "not satisfied that sufficient information was provided to demonstrate that JLP's cost information is complete, accurate and relevant", and it did not rely on JL Plastic's cost data for the normal value. JL Plastic had the same opportunity in this inquiry and did not take it.

The rate is built from actual export prices

The 63.6% margin is not an adverse inference drawn against absent exporters. The Commission worked out the export price from the Australian Border Force import data, selecting the lowest weighted average export price because "it is the price at which one of the largest Malaysian exporters of the goods exported the goods to Australia". It did so because the two largest uncooperative exporters "accounted for approximately 61% of Malaysian exports during the inquiry period, and both exported at materially lower prices than GCI". The normal value is GCI's verified normal value, the only contemporary normal value on the record. The margin is the gap between those two figures, each of which comes from real transactions.

The Commission has explained the increase from the original rate in terms that answer JL Plastic directly. The uncooperative margin "reflects lower levels of cooperation from other exporters and the relevant information accordingly available to the commission". Annex II to the Anti-Dumping Agreement anticipates exactly that outcome where "if an interested party does not cooperate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate". A higher rate for an exporter that withheld its data is the outcome the system provides for, and JL Plastic was free and able to avoid it.

GCI's rate

JL Plastic also points to the rise in GCI's duty rate from 14.2% to 16.7% as part of a "dramatic escalation". GCI's dumping margin has in fact fallen slightly, from 17.2% to 16.7%. Its duty rate has risen only because GCI's original rate was set below its margin by the lesser duty rule, and in this inquiry the Commissioner found that the non-injurious price "was not less than" the normal value for any exporter, so that it "should not be the operative measure". Nothing in GCI's figures shows an escalation of the measures. They show dumping continuing at almost the original margin after five years of measures.

The measures have worked, and the "unchanged prices" point is Cromford's evidence

JL Plastic's central argument is that the Commission's "own findings show that import prices from Malaysia 'have not materially changed since the anti-dumping measures were first introduced'", so that five years of duties "have failed to alter pricing behaviour" and higher duties "will not succeed".

The words JL Plastic quotes are not a finding of the Commission. They come from the notice initiating this inquiry, where the Commission set out the claims made in Cromford's application. The notice records the statement among the matters that "Cromford's application sets out", and its next sentence provides the explanation, "[a]side from the identified circumvention activities, Cromford claims that this suggests that the cost of duties has been absorbed rather than pricing behaviour being altered."¹⁸

Cromford went on to state that "despite the imposition of a minimum 11.4% dumping duty, prices have not materially changed since the measures were originally imposed", and gave the reasons in the next sentence, "[t]his is in part due to the two instances of circumvention activity confirmed by the Commission, and also likely reflects the absorption of duties resulting in reduced profit margins of the importers and/or exporters."¹⁹

Read with its reasons, the statement supports continuation. Stable market prices under the measures mean that Malaysian suppliers either avoided the duty through the two circumvention schemes the Commission has since found, or absorbed it by lowering their prices. The SEF found the second effect in GCI's own data, as the ratio between GCI's FOB price and Cromford's selling price "has lowered compared to the same ratio during INV 554", which the Commission found "is likely to be an accommodation of dumping duties". The Commission put that as a likelihood, but it sits with the margin the SEF found for GCI itself, still 16.7% after five years of measures. An exporter that absorbs the duty by cutting its price is still dumping.

Nor have the measures failed in their purpose. That purpose is to prevent the material injury that dumping causes, and the test the Commissioner applies is whether "the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent". Under the measures Cromford's sales volumes in the inquiry period were 22.7% above the original investigation period, and the Commission concluded that "the Australian industry's increased sales are consistent with the measures having been effective". JL Plastic's argument assumes that a measure succeeds only if it raises import prices, whilst the Act asks a different question.

The lesser duty rule has nothing to operate on

JL Plastic says the Commission "has not demonstrated that a 63.6% rate is the minimum necessary to prevent injury", invokes a lesser duty commitment in the Malaysia-Australia Free Trade Agreement, and asks that the rates be reassessed against the lesser duty rule.

The Australian rule is in s.8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975*. It applies where "the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice is less than the normal value of goods of that kind", and in that case the Minister "must, in performing that function, have regard to the desirability of specifying a method such that the sum of the following does not exceed that non-injurious price". The non-

¹⁸ ADN No. 2026/022, *Initiation of a Continuation Inquiry No 696 into Anti-Dumping Measures*, section 6, p 4 (EPR 696, document 2).

¹⁹ Cromford *Application for the continuation of measures* (non-confidential version), lodged 6 January 2026, p 2 (EPR 696, document 1).

injurious price is "the minimum price necessary ... to prevent the injury, or a recurrence of the injury".

The Commissioner compared the non-injurious price with the normal value of GCI and of all other exporters and found that it "was not less than those amounts". The condition in s.8(5B) is therefore not met. In practical terms, a duty at the full margin raises the export price only as far as the normal value, which is still at or below the price the Commission has found necessary to prevent a recurrence of injury. Any lesser duty would leave the price below that level. The full margin is therefore not more than the injury requires, and the "minimum necessary" demonstration JL Plastic asks for is the comparison the Commissioner has already made.

JL Plastic describes the lesser duty commitment it relies on as a rule that "duties should be less than the dumping margin where a lesser duty would remove injury". Its letter does not set out the text of the provision of the Free Trade Agreement it has in mind, and Cromford makes no comment on it. On JL Plastic's own description though, the rule produces the same answer. Article 9.1 of the Anti-Dumping Agreement is framed the same way, where it is "desirable ... that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry". On the Commissioner's finding, no lesser duty would be adequate.

The rule has been applied in this very matter whenever its condition was met. In the original investigation the non-injurious price was below the normal value for all exporters except one, and JL Plastic's own duty was set at 20.1% against a margin of 21.9%. JL Plastic's assertion that Australia reduces rates "by an average of 15%" has no source and is not relevant to whether the condition is met in this inquiry.

Construction costs and housing

JL Plastic says that a 63.6% duty "will inevitably flow into project costs", worsening inflation and housing delivery, and cites figures for construction insolvencies and building material prices. None of those figures is sourced, and none is specific to concrete underlay film. The letter offers no evidence of what underlay film contributes to the cost of a slab or a dwelling.

The argument also sits awkwardly with JL Plastic's own premise. If, as JL Plastic says, duties of 11.4% to 23.2% over five years left market prices unchanged, those duties did not pass through to builders and households. Cromford's prices over the injury analysis period "remained relatively flat". JL Plastic does not identify any finding that the measures have driven up construction costs, and the public record contains none.

More fundamentally, these are not the matters the Commissioner is required to decide. The Commissioner's recommendation turns on the statutory question in s.269ZHF(2), set out in section 3 above, and on the matters to which s.269ZHF(3) requires or permits the Commissioner to have regard. JL Plastic does not explain how housing affordability or the inflation target would bear on whether the expiry of the measures would be likely to lead to a recurrence of dumping and material injury. Its requests that the Minister engage with the Malaysian Ministry of Investment, Trade and Industry and the Free Trade Agreement Joint Commission, and meet exporters and end users, are matters for government and raise nothing for the Commissioner's report.

The environmental claims

JL Plastic argues that recycling waste plastic into resin in Australia is "not inherently 'green'", and that the measures shift environmental burdens to Australia. The claims about water use, electricity and pollution are general assertions with no source, and none of them is directed to Cromford's operations.

The cost figures JL Plastic gives are also inconsistent with one another. The same page puts Australian recycled resin at "up to 50% higher than imported recycled resin", at "approximately double the premium for imported recycled resin", and at "up to 50% above virgin resin prices". Those are three different comparisons, and none is supported.

The argument also misdescribes the competition. The goods from any source are made the same way, "[r]egardless of origin, concrete underlay film is manufactured from either recycled and/or virgin resins". Malaysian film made from recycled resin carries the same processing burdens JL Plastic attributes to Australian production, and JL Plastic says nothing about the environmental performance of its own plant or of shipping the goods to Australia.

JL Plastic quotes Cromford as saying that it uses "a high proportion of recycled resins produced from post-consumer and post-industrial plastic", without giving a source. JL Plastic also suggests domestic recycled resin is "economically unviable without permanent subsidies". The anti-dumping measures are not a subsidy. They respond to dumping the Commission has found at margins of 16.7% and 63.6%, and the Commission found that Cromford "remained profitable throughout the injury analysis period" with the measures in place.

None of this goes to the question in s.269ZHF(2), which is whether expiry would be likely to lead to a recurrence of dumping and material injury does not depend on the comparative environmental merits of Australian and Malaysian production.

6. Response to GT-MAX and Solary submissions

Neither exporter cooperated

The Commissioner considered every part of Solary's response, including the parts lodged after the extended due date, and found that "[t]he information provided in the response is not complete, relevant, or accurate". Whole sections were missing, including the list of model control codes and the Australian cost to make data. Solary does not dispute any of those findings. GT-MAX does not say it responded at all, and the SEF records that "[n]o other exporters provided a completed REQ".

Much of what both exporters now say about model mix and comparability relies on information they chose not to provide to the Commission.

The all-other rate

Solary says the Commission should have repeated its original method. The method the Commission has used is a sound replacement. The export price is the lowest weighted average export price of one of the largest Malaysian exporters, taken from import data that reconciled to the verified data of the cooperating exporter, Great Cosmo Industries Sdn Bhd (GCI), within "1.5%

and 6.1%". The Commission found that exporter's model mix "broadly comparable" to GCIs, and the normal value is GCI's verified normal value.

GT-MAX says Malaysian producers share the same cost conditions. If so, a common normal value is right, and the gap between 16.7% and 63.6% comes from the lower export prices of the largest exporters.

The alternatives the exporters propose would understate that dumping. Solary's average across all uncooperative imports would sit above the selected large exporter's own price. GT-MAX's cap at 16.7% would give exporters that withheld their data the margin of the one exporter that supplied it.

Recurrence and imports from Vietnam

Both exporters point to Cromford's improved results under the measures, which the Commission has already answered in the SEF report.

Both also say the shift in import share to Vietnam breaks the causal link. Each quotes the SEF's price findings and stops short of the Commission's conclusion, which is that the close alignment of Malaysian and Vietnamese prices "supports the view that Malaysian exporters would likely continue to compete through lower priced exports, including at dumped prices, should the measures expire". The Ministerial Direction on Material Injury 2012 confirms that dumping "need not be the sole cause of injury to the industry".

GT-MAX's claim that the Commission "acknowledged" that import prices "have not materially changed" misreads the initiation notice. Those words summarise Cromford's application, and the next sentence explains that "the cost of duties has been absorbed rather than pricing behaviour being altered". Absorbing the duty is continued dumping.

GT-MAX's other claims

GT-MAX says the measures penalise efficient Malaysian production. Where domestic sales are too few, the normal value starts from "the cost of production or manufacture of the goods in the country of export", and GCI's was built from its own records, so any efficiency is already reflected in the normal value. A 16.7% margin for GCI means its export price was below its own Malaysian cost and profit.

GT-MAX's figures on construction insolvencies, building costs and recycling are unsourced, are not specific to the goods, and do not relate to the question the Commissioner must decide under s.269ZHF(2).