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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

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 on certain concrete underlay film (the goods) exported to Australia from Malaysia. It responds to the letter of the Ministry of Investment, Trade and Industry on behalf of the Government of Malaysia (the Government), and to the submission of Davmar Industries Pty Ltd (Davmar), each made in response to the Statement of Essential Facts (SEF 696).

The expiry of the measures would be likely to lead to a recurrence

Davmar and the Government both argue that the measures should end because Cromford is now doing well. They point to higher sales, a return to profit and a better return on investment. The Government goes so far as to describe Cromford as being in a position of exceptional financial strength.

The SEF correctly treats it as evidence that the measures are working, and concludes that once they are removed, lower priced Malaysian imports would be likely to regain their advantage and bring back the volume and price effects found in the original investigation. Davmar relies on the same finding but reaches the opposite conclusion.

The SEF's approach is the one the Act requires. Under section 269ZHF(2), the question is whether the expiry of the measures would be likely to lead to a continuation or recurrence of the dumping and of the material injury the measures are intended to prevent. That question looks forward, to injury the measures have so far held off. An industry that has recovered while protected by the measures is what one would expect to see if the measures are effective. It says little about what would happen without them.

The Government's point that measures are meant to be temporary does not change this. Article 11.3 of the Anti-Dumping Agreement allows a duty to continue beyond five years where a review finds that its expiry would be likely to lead to continuation or recurrence of dumping and injury. That is the inquiry now under way. The Ministerial Direction on Material Injury 2012 makes the

related point that an industry able to absorb dumping while healthy may suffer material injury from the same dumping once other events have weakened it.

The Government puts flat prices down to stable resin costs, but offers nothing to support that. The SEF finds instead that import competition may have held Cromford's prices down. The Government also points to a profit peak in the September 2025 quarter without noting that profit fell again in the following quarter.

Its volume comparison starts from FY 2020, before the measures were imposed. Within the injury analysis period the market contracted, and the SEF refers to a forecast that building and construction activity may contract further in 2026. If the measures expire, dumped imports would return to a weaker market. That is the circumstance the Direction warns about.

Imports from Vietnam

Both submissions say that Vietnam, not Malaysia, has taken the share Malaysia lost and is the real source of price pressure. The Government relies on section 269TAE(2A) of the Act and Article 3.5 of the Anti-Dumping Agreement.

The Commission has considered this. It accepted that some growth in Malaysian exports may come at the expense of other import sources, but concluded that any rise in Malaysian volumes would be likely to cost the Australian industry sales and market share. Davmar's claim that the SEF does not separate the two sources or explain its attribution is therefore wrong.

Davmar's own premises support the SEF. It accepts that Cromford pays close attention to import prices and that the market is highly price sensitive. If so, the price at which Malaysian goods enter the market bears directly on Cromford's prices. Malaysian and Vietnamese FOB prices are already closely aligned, and only the Malaysian goods carry a dumping duty. Removing the duty takes away a cost that sits on the Malaysian side alone.

Davmar also presents the two sources as roughly equal in 2024 and 2025, but leaves out the most recent movement. In 2025 Malaysia's share recovered slightly while Vietnam's dipped.

Cromford accepts that other factors must be considered, and the SEF considers them. Article 3.5 requires that injury caused by other factors, including imports that are not dumped, is not attributed to the dumped imports. The SEF attributes to Malaysia only the effects it finds Malaysian dumped imports would have.

The rate for uncooperative and all other exporters

Davmar and the Government both say the Commission has abandoned the method used in the original investigation. It has not. In REP 554 the Commission set the export price for uncooperative exporters at the lowest export price of the cooperating exporters, and the normal value at the highest of their normal values, each chosen separately. That is the same pairing of a low export price with a high normal value that the Government now criticises as a composite approach.

What has changed is the evidence. REP 554 could rely on the cooperating exporters because they accounted for a significant share of Malaysian exports. In this inquiry only Great Cosmo

Industries Sdn Bhd (GCI) cooperated, and it is not the largest Malaysian exporter. The two largest exporters shipped about 61% of Malaysian exports between them, at materially lower prices. Relying on GCI's export price alone would overstate the export price for most of the uncooperative volume.

Nor is the method a synthetic construct divorced from commercial reality, as Davmar and the Government suggest. The export price comes from actual transactions in the ABF import database. That database closely matched GCI's verified volume and FOB price, and the exporter whose price was chosen sold a similar mix of model categories to GCI. This answers the Government's concern about product specifications.

The normal value is GCI's because it is current and because the Commission has nothing else. No other exporter completed a questionnaire, even though the questionnaire was available to every exporter on the Commission's website. That gap is of the exporters' own making.

The Act also directs this approach. For an uncooperative exporter in a continuation inquiry, section 269TACAB(1) requires the export price and normal value to be worked out under sections 269TAB(3) and 269TAC(6), having regard to all relevant information. Davmar relies on that phrase, and the SEF sets out the information the Commission considered relevant. Annex II of the Anti-Dumping Agreement recognises that a party that does not cooperate may receive a less favourable result than if it had.

Davmar would prefer a weighted average across all uncooperative exporters, and the Government a weighted average of all Malaysian imports other than GCI's. The Commission considered the first option and chose the lowest weighted average for sound reasons. It shows the price at which an uncooperative or new exporter may sell, it is the price one of the largest Malaysian exporters actually charged, and that exporter's product mix was comparable to GCI's. Davmar calls the first reason speculative, but the other two rest on recorded transactions.

Neither submission identifies an error in that reasoning. The Government says only that the choice may have overstated the margin. Davmar describes itself as the largest seller of the goods in Australia and imports from Malaysia. It holds the invoices that would show what exporters actually charged, yet it has put no price on the record.

Cromford submits that the SEF method should be confirmed in the final report.

Davmar's decision not to take part

Davmar now complains about the findings and about how the inquiry was conducted. It had every opportunity to shape and be involved in both, and Cromford asks Davmar to explain why it did not.

Davmar is familiar with these inquiries. It made submissions in the original investigation. In the 2022 anti-circumvention inquiry the Commission sent it an importer questionnaire after Cromford identified it as an alleged importer of the circumvention goods. No importer returned a questionnaire in that inquiry, although Davmar later lodged a submission on the SEF.

In this inquiry the Commission sent questionnaires to the three largest importers, which together brought in about 60% of the goods from Malaysia, and published the questionnaire for all other importers. None was returned.

Davmar should answer three questions. Was it aware of this inquiry when it was initiated, and did it receive an importer questionnaire? Did it make a deliberate decision not to cooperate? If so, why?

The answer matters because of what a questionnaire response would have revealed. The inquiry period is the 2025 calendar year. In REP 671 the Commission found that the measures had been circumvented by exports of grey film, and backdated its change to the measures to 23 April 2025 because the circumvention had begun before that inquiry started. A complete importer response would have shown Davmar's imports during 2025, by product and by supplier.

Cromford asks the Commission to consider whether Davmar's decision not to cooperate comes down to an unwillingness to answer questions, or provide information, about imports that may have circumvented the measures. Having withheld that information, Davmar is poorly placed to complain that the findings rest on other evidence.

Retaining the 2021 rates

The Government asks that the 2021 rates be kept unchanged because they were enough to remove the injury. It also objects to exporters that cooperated in the original investigation now facing the higher residual rate. Those exporters were L&L Trading Enterprise, Unistar Industries, Plastik V and JL Plastic Industries.

None of them gave the Commission any information in this inquiry, and the SEF rightly treats each as uncooperative under section 269T(1). Keeping their 2021 rates would reward them for cooperating in 2021, on exports in 2025 about which they provided nothing. Section 269ZHF(1)(a)(iii) allows the Commissioner to recommend that the measures continue as if different variable factors had been ascertained, and the SEF finds that the variable factors for Malaysian exporters generally have changed.

The lesser duty rule

Davmar argues that full dumping margins would push prices above the level needed to prevent injury, because a healthier industry should have a lower NIP. In the alternative, it asks that the measures continue on their current terms.

The lesser duty rule in section 8(5B) of the Customs Tariff (Anti-Dumping) Act 1975 applies only where the NIP is less than the normal value. In that case the Minister must consider setting the duty so that the export price plus the duty does not exceed the NIP. Here the SEF finds that the NIP is not less than the normal value, for GCI and for all other exporters. At the full margin, export price plus duty equals normal value, so the total already does not exceed the NIP. That is the outcome the rule exists to secure, and Davmar's argument does not survive the comparison the Act requires.

The NIP is built from an unsuppressed selling price, being Cromford's cost to make and sell plus a profit, adjusted back to the FOB point. The Act defines the NIP as the minimum price needed to prevent the injury or its recurrence. Davmar does not explain how the health of the industry would reduce it.

Davmar also asks how the Commission can treat orange film as similar to black film for the NIP, when REP 554 found orange film was not like goods. REP 554 did both. It found orange film was not like goods but was similar in certain respects, and in the same report it used Cromford's verified orange film profit margin as the proxy profit for the unsuppressed selling price. The SEF follows that approach, which the Dumping and Subsidy Manual allows where the industry's data for a similar category of goods has been verified. Davmar cannot ask for the measures to continue on the terms of REP 554 while objecting to the way REP 554 built the NIP.

Its complaint that the orange film data is about five years old is also misplaced. The SEF used Cromford's profit margin from the inquiry period, and relied on the earlier verification only to confirm that orange film remained a suitable proxy.

Davmar says the NIP should instead have been based on Cromford's own prices in the inquiry period, because the measures have removed the injurious effect of dumping. The Manual prefers industry selling prices from a period unaffected by dumping, and allows a constructed price where there is good reason not to use them. There is good reason here. The SEF finds that dumping has continued, at margins of 16.7% for GCI and 63.6% for all other exporters, so there is no recent period unaffected by dumping. Davmar's premise cannot stand with those findings.

Cromford submits that the constructed unsuppressed selling price and the finding that the NIP is not less than the normal value should be confirmed, and that no lesser duty should be recommended.

Davmar's claims about Cromford's business

Davmar's claims about Cromford's business rest on the instructions of its director, Mr Williams, and on unspecified reports from customers. It offers no documents or data.

It says the SEF relies on Cromford's sales data without fresh verification. Cromford's data was verified in the original investigation. In this inquiry the Commission checked Cromford's questionnaire response against REP 554 and the two anti-circumvention inquiries before accepting it, and inspected Cromford's production facility in August 2025.

Davmar also says Cromford imports film from GCI for resale, so that any injury from those imports is self-inflicted. That is plainly incorrect. Cromford does not import concrete underlay film for resale, directly or indirectly, from GCI or any other supplier. The Commission can confirm this from the ABF import database, which names GCI's Australian customers as the importers, and from GCI's verified export sales data. The SEF itself finds that the like goods were wholly manufactured in Australia by Cromford, that GCI sold at similar prices to all its unrelated customers, and that GCI had no related Australian customers.

Davmar seeks further verification because GCI has a lower rate than other exporters. GCI has that rate because it alone cooperated and gave the Commission complete and accurate information.

Any other exporter could have done the same. Cromford will assist with any verification the Commissioner considers necessary.

Capacity, volumes and price

Davmar argues that Cromford is at capacity, so any volume lost on expiry could not have been supplied by Cromford and cannot be material injury. Even if that were right, it would not answer the price injury the SEF finds.

Cromford sets its prices with close regard to import prices and tracks competing import offers. The original investigation found that it was not a price setter. On that basis the SEF finds that dumped exports would be likely to suppress or depress Cromford's prices. Davmar's description of Cromford's pricing as a strategic choice is not a finding in the SEF.

Davmar also says Cromford's prices are generally lower than its own, even though Davmar's product comes from Malaysia. Taken at face value, that describes Malaysian goods carrying the duty and selling above Cromford's price. Whether they would still do so without the duty is the question the SEF answers.

Review rights

The Government asks that exporters who cooperated in the original investigation be given the chance to seek a review, and that new Malaysian exporters be able to seek an accelerated review. The Act already provides for both, in sections 269ZA and 269ZE, and no recommendation is needed in this inquiry.

An individual rate is built from the exporter's own verified data. The way to obtain one is to apply and provide that data. Keeping the 2021 rates for exporters that provided nothing in this inquiry is no substitute. Cromford submits that the final report need make no provision for review.