

PUBLIC RECORD



**Australian Government**  
**Australian Customs and  
Border Protection Service**

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*CUSTOMS ACT 1901 - PART XVB*

**TRADE MEASURES BRANCH**

**STATEMENT OF ESSENTIAL FACTS NO.150**

**SILICONE EMULSION CONCRETE ADMIXTURES**

**FROM**

**THE UNITED STATES OF AMERICA**

**31 JANUARY 2010**

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PUBLIC RECORD

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## CONTENTS

CONTENTS .....	2
ABBREVIATIONS.....	4
<b>1. SUMMARY AND RECOMMENDATIONS .....</b>	<b>5</b>
1.1. PROPOSED RECOMMENDATION .....	5
1.2. APPLICATION OF LAW TO FACTS.....	5
1.3. PRELIMINARY FINDINGS AND CONCLUSIONS .....	6
1.4. FINAL REPORT .....	7
<b>2. BACKGROUND .....</b>	<b>8</b>
2.1. INITIATION .....	8
2.2. PRELIMINARY AFFIRMATIVE DETERMINATION .....	9
2.3. RESPONDING TO THE SEF.....	9
2.4. PREVIOUS SECA CASES.....	10
<b>3. THE GOODS AND LIKE GOODS .....</b>	<b>11</b>
3.1. PRELIMINARY FINDING.....	11
3.2. THE GOODS.....	11
3.3. TARIFF CLASSIFICATION.....	11
3.4. LIKE GOODS.....	11
<b>4. AUSTRALIAN INDUSTRY.....</b>	<b>13</b>
4.1. PRELIMINARY FINDING.....	13
4.2. MANUFACTURING/PRODUCTION PROCESS.....	13
4.3. PRELIMINARY CONCLUSION – AUSTRALIAN INDUSTRY .....	13
<b>5. AUSTRALIAN MARKET.....</b>	<b>14</b>
5.1. MARKET STRUCTURE .....	14
5.2. DISTRIBUTION.....	15
5.3. MARKET SIZE.....	15
<b>6. DUMPING INVESTIGATION.....</b>	<b>16</b>
6.1. PRELIMINARY FINDING.....	16
6.2. INTRODUCTION .....	16
6.3. IMPORTERS .....	16
6.4. EXPORTERS .....	16
6.5. SUMMARY – DUMPING INVESTIGATION .....	18
<b>7. ECONOMIC CONDITION OF THE INDUSTRY .....</b>	<b>19</b>
7.1. PRELIMINARY FINDINGS.....	19
7.2. INTRODUCTION .....	19
7.3. COMMENCEMENT OF INJURY .....	19
7.4. VOLUME EFFECTS .....	20
7.5. PRICE EFFECTS.....	20
7.6. PROFIT EFFECTS.....	22
7.7. OTHER ECONOMIC FACTORS .....	23
7.8. PRELIMINARY CONCLUSION – ECONOMIC CONDITION OF THE INDUSTRY .....	25
<b>8. HAS DUMPING CAUSED MATERIAL INJURY? .....</b>	<b>26</b>
8.1. PRELIMINARY FINDINGS.....	26
8.2. INTRODUCTION.....	26
8.3. DUMPING.....	26

# PUBLIC RECORD

8.4.	PRICE EFFECTS.....	26
8.5.	VOLUME EFFECTS.....	28
8.6.	PROFIT EFFECTS.....	29
8.7.	OTHER POSSIBLE CAUSES OF INJURY.....	30
8.8.	SUMMARY – CAUSAL LINK.....	31
<b>9.</b>	<b>WILL DUMPING AND MATERIAL INJURY CONTINUE?.....</b>	<b>32</b>
9.1.	PRELIMINARY FINDINGS.....	32
9.2.	INTRODUCTION.....	32
9.3.	CUSTOMS AND BORDER PROTECTION’S ASSESSMENT.....	32
<b>10.</b>	<b>NON-INJURIOUS PRICE.....</b>	<b>34</b>
10.1.	PRELIMINARY FINDINGS.....	34
10.2.	INTRODUCTION.....	34
10.3.	UNSUPPRESSED SELLING PRICE.....	34
10.4.	AUSTRALIAN INDUSTRY.....	35
10.5.	CUSTOMS AND BORDER PROTECTION’S ASSESSMENT.....	35
10.6.	COMPARISON OF THE NIP TO THE EXPORT PRICES.....	35
<b>11.</b>	<b>CUSTOMS AND BORDER PROTECTION’S ASSESSMENT.....</b>	<b>36</b>
<b>12.</b>	<b>ATTACHMENTS.....</b>	<b>37</b>

PUBLIC RECORD

# PUBLIC RECORD

## ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
Australian industry	the Australian industry producing SECA
BASF	BASF Construction Chemicals LLC
BASF Australia	BASF Construction Chemicals Australia Pty Ltd
CEO	Chief Executive Officer of the Australian Customs and Border Protection Service
CTMS	cost to make and sell
Customs and Border Protection	the Australian Customs and Border Protection Service
FOB	free on board
GFC	global financial crisis
Minister	The Minister for Home Affairs
NIP	non-injurious price
PAD	preliminary affirmative determination
SECA	silicone emulsion concrete admixtures, the goods subject of the investigation
SEF	Statement of essential facts
Tariff Act	<i>Customs Tariff Act 1995</i>
Tech Dry	Tech-Dry Building Protection Systems Pty Ltd
Tech Link	Tech Link International Pty Ltd
the goods	the goods the subject of the application
USA	United States of America
USP	unsuppressed selling price

# PUBLIC RECORD

## 1. SUMMARY AND RECOMMENDATIONS

This investigation is in response to an application by Tech Dry Building Protection Systems Pty Ltd (Tech Dry) in relation to the alleged dumping of silicone emulsion concrete admixtures (SECA) exported to Australia from the United States of America (USA).

This statement of essential facts (SEF) sets out the facts on which the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) proposes to base his recommendations to the Minister for Home Affairs (the Minister) in relation to the application.

### 1.1. Proposed recommendation

The CEO proposes to recommend to the Minister that a dumping duty notice be published in respect of SECA exported to Australia from the USA.

### 1.2. Application of law to facts

#### 1.2.1. Authority to make decision

Division 2 of Part XVB of the *Customs Act 1901*<sup>1</sup> sets out, among other matters, the procedures to be followed and the matters to be considered by the CEO in conducting investigations in relation to the goods covered by the application for the purpose of making a report to the Minister. The CEO's powers under this Division have been delegated to certain officers of Customs and Border Protection.

#### 1.2.2. Application

On 22 July 2009, Tech Dry lodged an application requesting that the Minister publish a dumping duty notice in respect of SECA exported to Australia from the USA.

The CEO was satisfied that the application was made in the prescribed manner by a person entitled to make the application<sup>2</sup>.

#### 1.2.3. Initiation of investigation

After examining the application, the delegate was satisfied that:

- there is, or is likely to be established, an Australian industry in respect of like goods; and

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<sup>1</sup> A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

<sup>2</sup> Section 269TB

# PUBLIC RECORD

- there appear to be reasonable grounds for the publication of a dumping duty notice in respect of goods the subject of the application, or for the publication of such a notice upon the importation into Australia of such goods<sup>3</sup>.

The CEO decided not to reject the application and notice of the initiation of this investigation was published on 14 August 2009<sup>4</sup>.

## **1.2.4. Statement of essential facts**

The CEO must, within 110 days after the initiation of an investigation, or such longer period as the Minister allows<sup>5</sup>, place on the public record a statement of the facts on which the CEO proposes to base his recommendation in relation to that application<sup>6</sup>.

In formulating the SEF, the CEO must have regard to the application concerned, any submissions concerning publication of the notice that are received by Customs and Border Protection within 40 days after the date of initiation of the investigation and any other matters considered relevant<sup>7</sup>.

For this investigation, the Minister granted a 28 day extension to the date by which the SEF must be placed on the public record. This SEF is now due on or before 31 January 2010.

## **1.3. Preliminary findings and conclusions**

Customs and Border Protection has made the following preliminary findings and conclusions based on all available information at this stage of the investigation:

### **1.3.1. Australian industry (Chapter 4 of this report)**

- there is an Australian industry producing like goods;

### **1.3.2. Dumping (Chapter 6 of this report)**

- export price for BASF Construction Chemicals LLC (BASF) can be calculated under s.269TAB(1)(a);
- normal value for BASF can be calculated under s269TAC(1);
- adjustments to BASF's normal value to enable fair comparison should be made under s.269TAC(8);

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<sup>3</sup> Subsection 269TC(1)

<sup>4</sup> Subsection 269TC(4)

<sup>5</sup> Section 269ZHI

<sup>6</sup> Subsection 269TDAA(1)

<sup>7</sup> Subsection 269TDAA(2)

# PUBLIC RECORD

- export price for all other exporters from the USA can be calculated under s.269TAB(3), using the export price established for BASF;
- normal value for all other exporters from the USA can be calculated under s.269TAC(6), using the normal value established for BASF;
- the goods exported from the USA to Australia during the investigation period were dumped; and
- the volume of dumped goods, and the dumping margin, were not negligible.

## **1.3.3. Injury (Chapter 7 of this report)**

During the investigation period the Australian industry producing like goods experienced injury in the form of:

- a decline in market share;
- lost sales volume;
- price depression; and
- reduced profit and profitability.

## **1.3.4. Causation (Chapter 8 of this report)**

- the dumping caused material injury to the Australian industry;
- customers of the Australian industry have used import prices from the USA to negotiate lower prices from the Australian industry; and
- in some instances the Australian industry has been unable to match import prices from the USA, resulting in customers of the Australian industry switching to the imported product.

## **1.3.5. Will dumping and material injury continue (Chapter 9 of this report)**

- exports of SECA from the USA in the future may be at dumped prices; and
- continued dumping may cause further material injury to the Australian industry.

Based on these preliminary findings, and subject to any submissions received in response to this SEF, the CEO proposes to recommend to the Minister that a dumping duty notice be published in respect of SECA exported from the USA to Australia.

## **1.4. Final report**

The CEO's final report and recommendation must be provided to the Minister by **17 March 2010**.

# PUBLIC RECORD

## 2. BACKGROUND

### 2.1. Initiation

On 22 July 2009, Tech Dry lodged an application under section 269TB.

The application requested that the Minister publish a dumping duty notice in respect of SECA exported to Australia from USA.

The applicant claimed that the allegedly dumped exports of SECA from the USA have caused material injury to the Australian industry in the form of:

- lost sales volume;
- lost market share;
- price undercutting;
- price suppression;
- reduced profits and profitability;
- reduced return on investment; and
- lost confidence in business expansion and investment

Public notification of initiation of the investigation was made on 14 August 2009 with a notice in *The Australian* newspaper and Australian Customs Dumping Notice (ACDN) No. 2009/27, which is available on the internet at [www.customs.gov.au](http://www.customs.gov.au) by following the anti-dumping link.

The investigation period is 1 July 2008 to 30 June 2009. Customs and Border Protection examined exports to Australia of the goods during that period to determine whether dumping had occurred. Customs and Border Protection examined the period from 1 July 2005 for injury analysis.

The initiation notice advised that the SEF for the investigation would be placed on the public record by 2 December 2009. Due to an extension of time provided to the exporter to supply information, Customs and Border Protection requested the Minister grant an extension of the deadline for the publication of the SEF.

The Minister extended the deadline for the publication of the SEF to 31 January 2010<sup>8</sup>. ACDN No. 2009/40 was issued on 23 November 2009 notifying of the Minister's decision and interested parties were also separately notified.

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<sup>8</sup> Pursuant to section 269ZHI

# PUBLIC RECORD

## 2.2. Preliminary affirmative determination

On 26 November 2009 the CEO publicly notified that a preliminary affirmative determination (PAD) had been made that there appeared to be sufficient grounds for the publication of a dumping duty notice in respect of the goods exported to Australia from the USA.

The CEO also gave public notice that the officer of Customs and Border Protection taking securities is satisfied that it is necessary to require and take securities to prevent material injury to the Australian industry occurring while the investigation continues<sup>9</sup>.

Customs and Border Protection required and has taken securities in respect of any interim dumping duty that may become payable in respect of the goods from the USA entered for home consumption on or after 26 November 2009<sup>10</sup>.

Customs and Border Protection's report concerning the PAD is on the public record (PAD 150).

## 2.3. Responding to the SEF

This SEF sets out the essential facts on which Customs and Border Protection proposes to base its recommendation to the Minister. This statement is an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response to the statement. It is important to note that the statement may not represent the final views of Customs and Border Protection.

Interested parties are given 20 days to respond to the statement. Customs and Border Protection will consider these responses in making its report to the Minister. The report will recommend whether or not a dumping duty notice should be published and the extent of any interim duties that are, or should be, payable. Customs and Border Protection must report to the Minister by 17 March 2010.

Responses to this SEF should be made no later than **Monday 22 February 2010**.

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<sup>9</sup> Pursuant to subsection 269TD(5)

<sup>10</sup> Pursuant to section 42

# PUBLIC RECORD

Submissions should be sent to:

Director Operations 1  
Trade Measures Branch  
Australian Customs and Border Protection Service  
5 Constitution Avenue  
CANBERRA ACT 2601  
AUSTRALIA

Submissions can also be sent to fax number +61 2 6275 6990 or email [tmops1@customs.gov.au](mailto:tmops1@customs.gov.au).

Customs and Border Protection is not obliged to have regard to any submissions made in response to the SEF received after 22 February 2010 if to do so would, in the opinion of the CEO, prevent the timely preparation of the report to the Minister.

Interested parties intending to respond to the statement must include a non-confidential version of their submission for placement on the public record<sup>11</sup>. Submissions provided in confidence must be clearly marked "In-Confidence".

As well as non-confidential submissions by interested parties and this SEF, the public record also contains non-confidential versions of Customs and Border Protection visit reports and other publicly available documents, such as Consideration Report 150, PAD 150, notices, and other information. These documents should be read in conjunction with the SEF.

Any party wishing to examine the public record before lodging a submission in response to this statement should contact Trade Measures Office Management staff on (02) 6275 6547.

Documents placed on the public record are also available on the electronic public record at <http://adpr.customs.gov.au/Customs/>.

All ACDNs are available on the internet at the Customs and Border Protection home page [www.customs.gov.au](http://www.customs.gov.au) (follow prompts for "Anti-dumping").

## **2.4. Previous SECA cases**

There have been no previous cases concerning SECA.

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<sup>11</sup> In preparing a non-confidential version, interested parties should have regard to the requirements set out in ACDN 2006/54.

### 3. THE GOODS AND LIKE GOODS

#### 3.1. Preliminary finding

Customs and Border Protection has made a preliminary finding that Tech Dry produces SECA that has characteristics closely resembling those of SECA manufactured in the USA and exported to Australia, and has therefore made a preliminary finding that SECA manufactured by Tech Dry are like goods<sup>12</sup>.

#### 3.2. The goods

The goods the subject of the application (the goods) are silicone emulsion concrete admixtures.

Further description of the goods is included in ACDN 2009/27.

#### 3.3. Tariff classification

The goods are classified to tariff subheading 3824.40.00 in Schedule 3 of the *Customs Tariff Act 1995* (Tariff Act). The rate of duty for the goods from the USA is free. This classification was confirmed by the Customs and Border Protection Tariff Operations Section.

#### 3.4. Like goods

The Act defines like goods as 'goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration'<sup>13</sup>.

In assessing like goods, Customs and Border Protection uses an analytical framework, which identifies different ways of examining likeness, namely physical likeness, commercial likeness, functional likeness and production likeness. Customs and Border Protection usually places greatest weight on physical likeness.

##### 3.4.1. Physical likeness

The technical data sheets for both the goods made in Australia and the goods the subject of the application include the technical specifications, many of which are similar for the locally produced and imported goods. Both the locally produced and imported goods use the same active ingredient, octyltriethoxysilane. Customs and Border Protection considers that the goods are physically alike even though the concentration levels are different for the locally produced and imported goods.

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<sup>12</sup> In terms of section 269T

<sup>13</sup> Subsection 269T(1)

# PUBLIC RECORD

## **3.4.2. Commercial likeness**

Commercial likeness refers to attributes identifiable from market behaviour.

Customs and Border Protection found that the goods made in Australia and the goods the subject of the application compete directly in the same marketplace. Both goods are used for the same applications in the same industries.

## **3.4.3. Functional likeness**

Functional likeness refers to end-use. End-use will not of itself establish like goods, but may provide support to the assessment of physical and commercial likeness.

Customs and Border Protection finds that the goods made in Australia and the goods the subject of the application are functionally substitutable.

## **3.4.4. Production likeness**

Different production processes may produce either identical goods or goods having different product characteristics. A comparison of production processes may not in itself determine whether goods are like, however it may highlight differences or provide support to the assessment.

Based on an inspection of the manufacturing facility for the locally produced product and our discussions with the exporter, Customs and Border Protection finds that the goods made in Australia and the goods the subject of the application are manufactured from similar raw materials using a similar manufacturing process.

## **3.4.5. Preliminary conclusion – like goods**

Based on the information available, Customs and Border Protection has made a preliminary finding that SECA manufactured by the Australian industry:

- have similar physical characteristics to the goods;
- compete in the same markets as the goods;
- have similar end uses as the goods; and
- are made using similar materials and in a similar manner as the goods.

Customs and Border Protection has therefore made a preliminary finding that the SECA produced by Tech Dry are like goods to the goods exported from the USA.

## 4. AUSTRALIAN INDUSTRY

### 4.1. Preliminary finding

Customs and Border Protection has made a preliminary finding that:

- there is an Australian industry producing like goods; and
- Tech Dry is the sole manufacturer of SECA in Australia.

### 4.2. Manufacturing/production process

For goods to be taken as produced in Australia:

- they must be wholly or partly manufactured in Australia; and
- for the goods to be partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia<sup>14</sup>.

Tech Dry states that it is the sole manufacturer of SECA in Australia. No other interested party has claimed to be an Australian producer of SECA.

Customs and Border Protection undertook a verification visit to Tech Dry, including a tour of its manufacturing facility, and reviewed the associated production costs as detailed in the Australian industry visit report.

Customs and Border Protection considers that at least one substantial process in the manufacture of SECA is carried out in Australia, and that SECA is wholly or partly manufactured in Australia.

### 4.3. Preliminary conclusion – Australian industry

Based on the information available, Customs and Border Protection considers that:

- the SECA manufactured or produced by Tech Dry are like goods;
- the like goods were wholly or partly manufactured in Australia;
- a substantial process of manufacture was carried out in Australia by Tech Dry<sup>15</sup>; and
- there is an Australian industry consisting of persons who produce like goods in Australia<sup>16</sup> in the form of Tech Dry.

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<sup>14</sup> Subsections 269T(2) and 269T(3)

<sup>15</sup> In terms of subsection 269T(3)

<sup>16</sup> In terms of subsection 269T(4)

# PUBLIC RECORD

## 5. AUSTRALIAN MARKET

### 5.1. Market Structure

Customs and Border Protection understands that the market for all concrete admixture products in Australia comprises five sectors:

- normal concrete, pre-mixed such as for driveways and footpaths;
- manufactured concrete products (MCP) such as pavers and masonry blocks;
- pre-cast concrete;
- cement additives and grinding for the production of concrete where the product is used to reduce friction and enhance the quality; and
- shot-crete, spray concrete that is used in mines and tunnels.

The admixture market in Australia, including SECA and other types of admixtures, is supplied by BASF Australia, Tech Dry, Sika Australia Pty Ltd (Sika) and Grace Construction Products Pty Ltd (Grace).

There are three main products in the admixture range for MCP products:

- water reducers - that reduce the amount of water required and thus the cement needed for the mixture;
- colour emulsions - efflorescence control (colour enhancing) and water-repellence (to stop blooming or white spots appearing); and
- slick enhancer – used to stop the concrete sticking to the steel plates that press the concrete blocks.

SECA generally falls into the second category – colour emulsions. SECA is used in the production of blocks, bricks and pavers for water repellence and efflorescence control. Prior to the development of SECA, products used for this purpose were fatty acid-based. While these products are substitutable for SECA, both Tech Dry and BASF have stated that SECA is a much more effective product and has greater durability.

Due to the price differential between SECA and fatty acid-based products, with SECA being more expensive, SECA is generally used in high end masonry blocks and pavers where appearance is of high importance.

The only two suppliers of SECA to the Australian market are Tech Dry and BASF Australia.

Customs and Border Protection understands that there are three main concrete manufacturers, and users of SECA products, in the Australian market:

- Adbri Masonry (Adbri);
- Boral Cement (Boral); and
- Austral Masonry (Austral).

In addition to these, there are a number of smaller users of SECA products.

# PUBLIC RECORD

## 5.2. Distribution

The majority of Tech Dry's sales are made via an exclusive distribution arrangement with Tech Link International Pty Ltd (Tech Link). Tech Link is not related to Tech Dry. Tech Dry also sells its SECA product directly to some customers. The majority of Tech Dry's and Tech Link's sales are delivered to the customer.

The imported product is distributed by BASF Australia. All BASF Australia's sales are delivered to the customer's site, and in most cases pumped into tanks on-site.

## 5.3. Market size

Customs and Border Protection has combined Australian industry sales data with data gathered from BASF Australia to estimate the size of the Australian market for SECA during the investigation period. In compiling the market, the active ingredient concentrations of the imported and Australian product have been converted to an equivalent basis because they are not sold at the same levels.

A graph of the market share may reveal confidential information so it is not produced in this report. Summary data for the Australian market is at **Confidential Appendix 1**.

The data shows that the market for SECA grew over the injury period, with the imported product entering the market in the 2007-08 financial year. Tech Dry's market share decreased in 2007-08, and further decreased in 2008-09.

## 6. DUMPING INVESTIGATION

### 6.1. Preliminary finding

Customs and Border Protection has made preliminary findings that:

- the export price for the goods can be established under s. 269TAB(1)(a);
- the normal value of goods sold by BASF on the domestic market can be established under s. 269TAC(1), with appropriate adjustments made under s. 269TAC(8);
- the goods exported by BASF during the investigation period were dumped, with a dumping margin of 110%; and
- the volume of dumped goods is not negligible.

### 6.2. Introduction

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC respectively.

This chapter explains the preliminary results of investigations by Customs and Border Protection into whether SECA was exported from the USA at dumped prices during the investigation period.

### 6.3. Importers

Tech Dry identified one importer of SECA, being BASF Australia. Following the initiation of the investigation, Customs and Border Protection conducted a search of its import database and did not identify any additional importers.

Customs and Border Protection undertook a verification visit to BASF Australia and the visit report is on the public record.

### 6.4. Exporters

#### 6.4.1. BASF

Tech Dry identified one exporter of SECA, being BASF. A search of Customs and Border Protection's database did not identify any additional exporters.

Customs and Border Protection received a completed exporter questionnaire from BASF. Customs and Border Protection undertook a verification visit to BASF and the visit report is on the public record.

# PUBLIC RECORD

## Export Price

BASF manufactured and exported SECA to Australia during the investigation period. The goods were imported by BASF Australia.

Customs and Border Protection found that:

- BASF was an exporter of SECA to Australia during the investigation period;
- the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter; and
- the sales by BASF to BASF Australia were arms length transactions<sup>17</sup>. Although BASF and BASF Australia are related entities, Customs and Border Protection does not consider that the price is influenced by that relationship.

Customs and Border Protection considers that the export price can be established under subsection 269TAB(1)(a), using the price paid for the goods by BASF Australia, other than any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation.

Customs and Border Protection's calculation of export price is at **Confidential Appendix 2**.

## Normal Value

BASF sold like goods on the domestic market during the investigation period. Customs and Border Protection found a sufficient volume of goods sold in the ordinary course of trade for home consumption in sales that were arms-length transactions. Customs and Border Protection considers that the normal value can be established under subsection 269TAC(1) using sales between BASF and its customers.

The normal value incorporated adjustments made under subsection 269TAC(8) to ensure a fair comparison with export prices.

Customs and Border Protection's calculation of normal value is at **Confidential Appendix 3**.

## Dumping Margin

Customs and Border Protection calculated a dumping margin for the investigation period by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period<sup>18</sup>.

The product dumping margin indicated that SECA exported by BASF from the USA to Australia was exported at dumped prices, with a dumping margin of 110%.

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<sup>17</sup> Section 269TAA

<sup>18</sup> In accordance with subsection 269TACB(2)(a)

# PUBLIC RECORD

Customs and Border Protection's calculation of the dumping margin is at **Confidential Appendix 4**.

## 6.4.2. Other exporters

Customs and Border Protection is not aware of any other exporters of SECA during the investigation period. Customs and Border Protection considers a dumping margin for all other exporters should be determined based on the export prices and normal values established for BASF.

## 6.5. Summary – Dumping Investigation

Customs and Border Protection must terminate the investigation if the dumping margin is negligible<sup>19</sup>. The dumping margin is negligible if the dumping margin for the exporter, when expressed as a percentage of the export price or a weighted average of export prices used to establish that dumping margin, is less than 2%. As set out above, the dumping margin established for BASF is greater than 2%, and so is not negligible.

Customs and Border Protection must terminate the investigation so far as it relates to a particular country if the volume of dumped goods is negligible<sup>20</sup>. The volume of dumped goods is negligible if this figure is 3% or less of the total Australian import volume<sup>21</sup>.

The volume of SECA imported from the USA at dumped prices during the investigation period was greater than 3% of the total Australian import volume. Therefore, the volume of dumped imports during the investigation period is not negligible.

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<sup>19</sup> Subsection 269TDA(1)

<sup>20</sup> Subsection 269TDA(3)

<sup>21</sup> In terms of subsection 269TDA(4)

## **7. ECONOMIC CONDITION OF THE INDUSTRY**

### **7.1. Preliminary findings**

Customs and Border Protection has made the following preliminary findings:

- Tech Dry has lost sales volume and market share;
- Tech Dry's weighted average sale price has decreased; and
- Tech Dry's total profits and profitability decreased in 2007-08 and 2008-09.

### **7.2. Introduction**

This section reports on the economic condition of the Australian industry and provides Customs and Border Protection's assessment as to whether Tech Dry has suffered injury.

The data contained in this section is based on verified data from Tech Dry. A verification visit report has been placed on the public record.

Tech Dry claims that the dumped imports of SECA from the USA have caused material injury in the form of:

- lost sales volume;
- lost market share;
- price undercutting;
- price suppression;
- reduced profits and profitability;
- reduced return on investment; and
- lost confidence in business expansion and investment.

### **7.3. Commencement of injury**

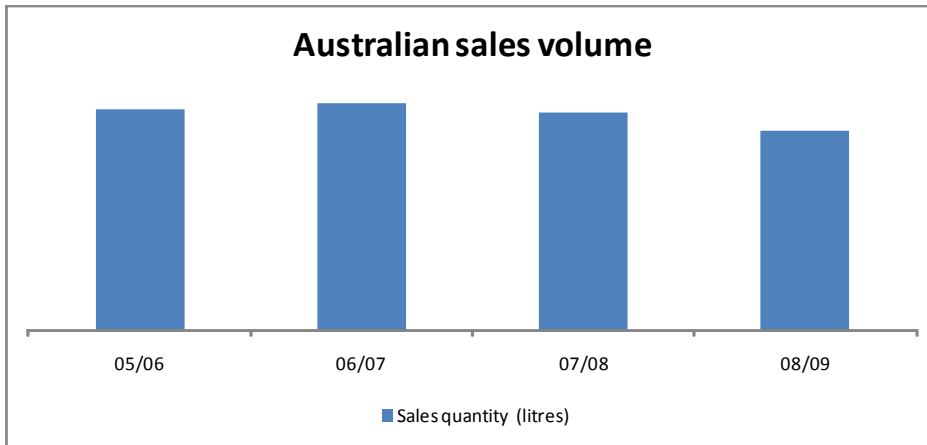
In the application Tech Dry claimed that material injury attributable to the dumped exports of SECA from the USA commenced in late 2007. Following Customs and Border Protection's visit to Tech Dry it became apparent that although Tech Dry was aware that the imports commenced in late 2007, Tech Dry did not attribute any injury caused by those imports until 2008-09.

# PUBLIC RECORD

## 7.4. Volume effects

### 7.4.1. Lost sales volume

Tech Dry claimed that it has experienced a loss of sales volume in the investigation period. The following graph illustrates the total sales volume of SECA by Tech Dry.



The data indicates that sales volumes peaked in 2006-07, then decreased in both 2007-08 and 2008-09 to levels below 2005-06. Tech Dry has experienced injury in the form of lost sales.

### 7.4.2. Lost market share

Tech Dry claimed that it has experienced a loss of market share in the investigation period. A graph of the market share may reveal confidential information so it is not produced in this report. The analysis is at **Confidential Appendix 1**.

The data shows that the market for SECA grew over the injury period, with the imported product entering the market in the 2007-08 financial year. Tech Dry's market share reduced from that point, decreasing by more than 20% in 2008-09.

### Conclusion – Loss of sales volume and market share

Based on the information verified during the investigation, Customs and Border Protection considers that Tech Dry has suffered injury in the form of lost sales volume and lost market share.

## 7.5. Price effects

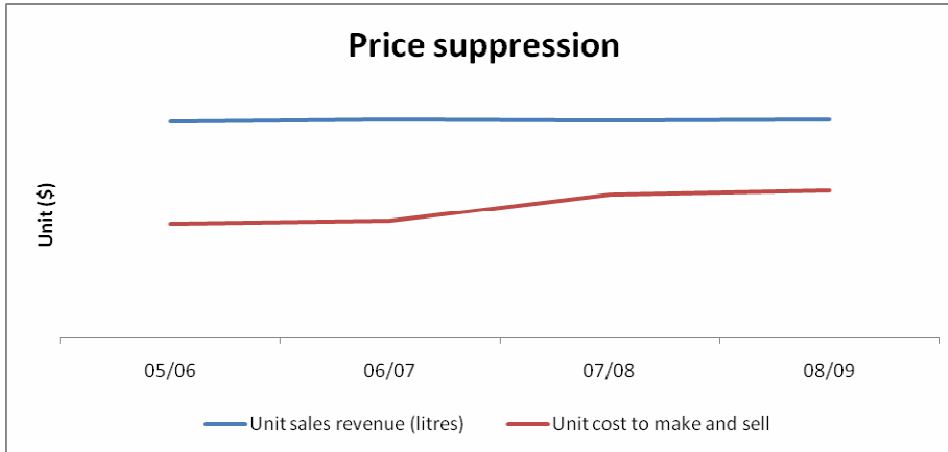
Price effects may be in the form of:

- price depression, which occurs when a company, for some reason, lowers its prices; and/or
- price suppression, which occurs when price increases for Tech Dry's product, which otherwise would have occurred, have been prevented.

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## 7.5.1. Price suppression

Tech Dry claims that it experienced price suppression in the investigation period. The following graph illustrates Tech Dry's unit selling price and unit cost to make and sell for SECA.



The weighted average unit cost to make and sell for SECA sold domestically by the company increased throughout the injury analysis period. At the same time, the weighted average unit selling price for SECA sold domestically remained stable. It therefore appears Tech Dry has experienced injury in the form of price suppression.

## 7.5.2. Price depression

Price depression during the injury analysis period is not evident from the chart at section 7.5.1 above; however the applicant claimed that price reductions to existing customers occurred from June 2009. We have been provided with the following evidence in support of this claim:

- copies of invoices issued by Tech Dry in August, September and October 2009 to a major customer showing a reduction in price from earlier invoices. The invoices show that the product is being supplied at less than Tech Dry's cost to make and sell; and
- a sales transaction listing from Tech Link showing that from June 2009 the price to another major customer reduced by more than 25% of the previous price. Tech Dry's sales information shows that Tech Dry's price to Tech Link for this customer also decreased from June 2009.

The following chart shows Tech Dry's weighted average sale price to major customers (including Tech Link) for the period July 2008 to December 2009:

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The weighted average sale price is based on sales of 1,000L containers, which represent the majority of Tech Dry's sales of SECA.

The trend line in the above chart shows a continuing downward trend in Tech Dry's average price throughout the investigation period and the six months following.

### 7.5.3. Conclusion - price suppression and depression

Based on the information verified during the investigation, Customs and Border Protection considers that Tech Dry has suffered injury in the form of price depression and price suppression.

### 7.6. Profit effects

Tech Dry claims that it has experienced reduced profits and profitability in the investigation period. The following graph illustrates Tech Dry's total profit and profitability for SECA.

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Profits from the company's domestic sales of SECA, and the profitability on those sales, decreased throughout the injury analysis period. Tech Dry has experienced injury in the form of reduced profits and profitability.

## Conclusion – Profit and profitability

Based on the information verified during the investigation, Customs and Border Protection considers that Tech Dry has suffered injury in the form of reduced profit and profitability.

## **7.7. Other economic factors**

Tech Dry did not provide data on other relevant economic factors<sup>22</sup>. The company claimed that due to its small size it was difficult to provide precise figures for the items listed in Appendix A-7 of the application.

At the visit, we discussed each of these factors with the company.

### **7.7.1. Return on investment**

Tech Dry advised that there had been no change to the capital invested in the company, or for the production of SECA, during the injury analysis period. As a result of the reduced profits shown in the graph above, the company has therefore experienced reduced return on investment between 2005-06 and 2008-09.

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<sup>22</sup> As described under subsection 269TAE(3)

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## **7.7.2. Sales revenue**

The data provided by Tech Dry indicates reduced sales revenue in 2008-09 in relation to sales of SECA, when compared to 2005-06.

## **7.7.3. Capacity utilisation**

The company advised that its capacity for production of SECA has not changed during the injury analysis period. The company's capacity utilisation during the investigation period in relation to SECA would have decreased given the reduction in sales, but this reduction has not been measured in percentage terms as some equipment is used to manufacture more than just SECA.

## **7.7.4. Assets**

Tech Dry advised that during the injury analysis period there had been no change to the assets used in the production of SECA.

## **7.7.5. Capital investment**

Tech Dry advised that there had been no change to the capital invested in the company, or for the production of SECA, during the injury analysis period.

## **7.7.6. Research and Development (R & D)**

The company advised that, whilst it regularly undertakes minor testing of the product in carrying out after sales service, there had been no expenditure on research and development associated with SECA during the injury analysis period.

## **7.7.7. Employment**

The company advised that its employment levels directly related to the manufacture of SECA have not changed over the injury analysis period.

The company stated that it did have an additional staff member with marketing responsibilities, however when this staff member left recently the company decided not to replace her. The company claimed this was due to the reduced sales arising from the impact of the allegedly dumped goods from the USA.

## **7.7.8. Productivity**

The company advised that it does not keep records of the amount of time its manufacturing staff spend manufacturing SECA. However, the company stated that it did not believe productivity levels would have changed significantly during the injury analysis period.

## **7.7.9. Stocks**

Tech Dry holds minimal stock on hand at any one time. The level of stock held by Tech Dry has not changed over the injury analysis period.

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## Conclusion – Other economic factors

Based on the information provided by Tech Dry, Tech Dry has suffered injury in the form of reduced sales revenue and return on investment.

### **7.8. Preliminary conclusion – economic condition of the industry**

Based on an analysis of the information contained in the application, and verified during the investigation, Tech Dry has experienced injury in the form of:

- lost sales volume;
- lost market share;
- price depression;
- price suppression;
- reduced profits and profitability; and
- reduced sales revenue and return on investment.

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## 8. HAS DUMPING CAUSED MATERIAL INJURY?

### 8.1. Preliminary findings

Customs and Border Protection has made a preliminary finding that there is a causal link between the material injury experienced by the Australian industry and the dumping of goods from the USA.

### 8.2. Introduction

This section examines whether dumped imports of SECA have caused material injury to the Australian industry.

The Minister may publish a dumping duty notice, and impose anti-dumping measures on future exports of like goods, where the Minister is satisfied that:

- the amount of the export price of the goods is less than the amount of the normal value of those goods; and
- the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods; and
- because of that, material injury to the Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered<sup>23</sup>.

In addition to information gathered from Tech Dry and BASF Australia, Customs and Border Protection sent questionnaires to the major end users of SECA, being Boral, Adbri and Austral. A copy of the questionnaire is on the public record<sup>24</sup>. Each end user provided a response, with Adbri consenting to the placement of a non-confidential version of its response on the public record.

### 8.3. Dumping

Customs and Border Protection has established that the only identified exporter from the USA, BASF, exported SECA to Australia at dumped prices during the investigation period. The dumping margin calculated for BASF is 110%.

### 8.4. Price effects

#### 8.4.1. Price undercutting

Price undercutting occurs when the imported product is sold at a price below that of the Australian manufactured product. Customs and Border Protection compared the selling

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<sup>23</sup> Section 269TG

<sup>24</sup> Public record 2009/029451-03, folios 139-144

# PUBLIC RECORD

prices of Tech Dry and Tech Link to the selling prices of imports of SECA to similar customers in Australia (on similar terms), during the investigation period, using:

- detailed sales data provided by Tech Dry and Tech Link; and
- detailed sales data provided by BASF Australia.

Customs and Border Protection considers that there is a close relationship between the prices Tech Link receives from its customers and the price Tech Link pays to Tech Dry. It is therefore appropriate to compare Tech Link's prices to its customers with the selling prices of BASF Australia.

Customs and Border Protection converted the selling prices to a common concentration of the active ingredient, given that Tech Dry's product and the imported product are sold at different concentration levels.

This analysis showed that Tech Dry experienced significant price undercutting throughout the investigation period. The undercutting was present both at the level of Tech Link's sales to end users, and Tech Dry's direct sales to customers. The analysis is at **Confidential Appendix 5**.

## 8.4.2. Price depression

As discussed at section 7.5.2 above, Tech Dry lowered its price to some major customers in June 2009. Tech Dry claimed that it had to reduce its price as a direct result of price pressure from the imported product. In support of this claim we were provided with:

- copies of correspondence between Tech Dry and one major customer in relation to the reduced price;
- copies of invoices to another major customer for sales in August, September and October 2009 showing the reduced price agreed to in June 2009. Tech Dry commenced selling directly to this customer, as opposed to via Tech Link, after June 2009. Tech Dry claims the change was made to enable Tech Dry to lower the price it could offer in order to retain the customer. The reduced sale price is below Tech Dry's cost to make and sell; and
- a detailed sales listing from Tech Link showing a significantly reduced price to another major customer from June 2009. This is reflected in a reduction in Tech Dry's sale price to Tech Link for sales destined for that customer.

A chart of the prices to individual customers cannot be shown as it may reveal confidential information; however analysis of the price reductions shows that, combined with the significance of the affected customers to Tech Dry, the impact on Tech Dry is material.

As discussed in section 5 above, Customs and Border Protection understands that there are three major concrete block manufacturers, and users of SECA products, in the Australian market. This market concentration results in the Australian industry being particularly vulnerable to price pressure from competitors.

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Customs and Border Protection did not identify any factor other than competition with the price of the imported product that would cause Tech Dry to lower its prices from June 2009 onwards.

## **8.4.3. Price suppression**

Raw material costs per unit rose by over 40% in 2007-08, and remained at that level in 2008-09. Due to customer resistance and competition from non-SECA substitutes, Tech Dry claims it deferred price increases in 2007-08 that would have recovered some or all of these cost increases. In 2008-09, Tech Dry claims that it faced competition from the dumped imports, which were offered at prices significantly undercutting prices of the Australian manufacturer. Tech Dry claims that it would have increased its price in 2008-09 in the absence of the dumped imports.

Due to the presence in the market of non-SECA substitutes at lower prices that impacted Tech Dry's decision not to increase prices in 2007-08, Customs and Border Protection considers it does not have sufficient evidence to be satisfied that any price suppression experienced by the Australian industry in 2008-09 was caused by the dumped imports. It is possible it was caused by other factors, such as competition from substitutes or SECA having reached a price ceiling.

## **8.5. Volume effects**

### **8.5.1. Loss of sales volume**

The analysis shows that Tech Dry lost sales volume in 2008-09. Sales in that year were below the level in 2006-07, which is prior to the entry of the imported product on the Australian market.

Tech Dry claimed that the Queensland branches of Adbri, one of its major customers, changed supplier from Tech Dry to BASF in late 2008. In support of this claim Customs and Border Protection has been provided with:

- copies of invoices issued by Tech Link to the relevant customers during the investigation period;
- sales reports from Tech Link showing the volume and value of sales to the relevant customers from July 2007 to June 2009. The report shows that the last sale to the relevant customers was September 2008;
- detailed sales listing from BASF Australia showing its sales to the relevant customers from July 2008; and
- a statement by Adbri, in response to a questionnaire prepared by Customs and Border Protection, confirming that its North Queensland branches had changed supplier from Tech Dry to BASF in February 2008<sup>25</sup>.

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<sup>25</sup> Public record 2009/029451-03, folios 149-150

# PUBLIC RECORD

Adbri's questionnaire response states that there are a number of factors that influence its choice of supplier; however the reason it changed to the BASF product was that it was cheaper and required a lower dosage rate. Customs and Border Protection is satisfied that there is no inherent difference in dosage rates between the locally produced and imported products that would provide a price advantage to the imported product.

The sales reports from Tech Link show that the decrease in sales of Tech Dry SECA to Adbri's North Queensland branches was significant in terms of Tech Dry's total sales volumes.

Customs and Border Protection considers that the information available supports the claim that the Australian industry has lost sales volume as a direct result of the dumped imports.

## **8.5.2. Loss of market share**

Prior to the entry of the BASF product on the Australian market in late 2007, Tech Dry was the sole supplier of SECA in the Australian market. The BASF product is the only other SECA product on the Australian market.

The market for SECA grew in 2008 and 2009, whereas Tech Dry's sales decreased over that time, leading to a loss of market share to the imported product. Other than the customer discussed at section 8.5.1 above, Customs and Border Protection has not identified any other Tech Dry customers that were lost to BASF during the investigation period. It appears that the customers gained by BASF following its entry into the market are mostly new SECA customers.

Taking into account that the market grew in a period affected by the global financial crisis, and the extent of the price undercutting referred to at section 8.4.1 above, Customs and Border Protection makes a preliminary finding that Tech Dry's loss of market share during the investigation period was due to the low price of the dumped imports.

## **8.6. Profit effects**

### **8.6.1. Reduced profit and profitability**

Tech Dry's reduced profit and profitability is a function of a loss of sales and increased costs, without corresponding increases in prices, from 2007-08.

As discussed at section 8.5.1 above, Customs and Border Protection considers that the lost sales volume during the investigation period was attributable to the dumped imports.

As discussed at section 8.4.2 above, Customs and Border Protection found that Tech Dry had reduced its price to major customers as a direct result of price competition from the dumped imports. The significance of the customers to Tech Dry leads to the price reduction having a significant effect on Tech Dry's profits and profitability in the period from June 2009.

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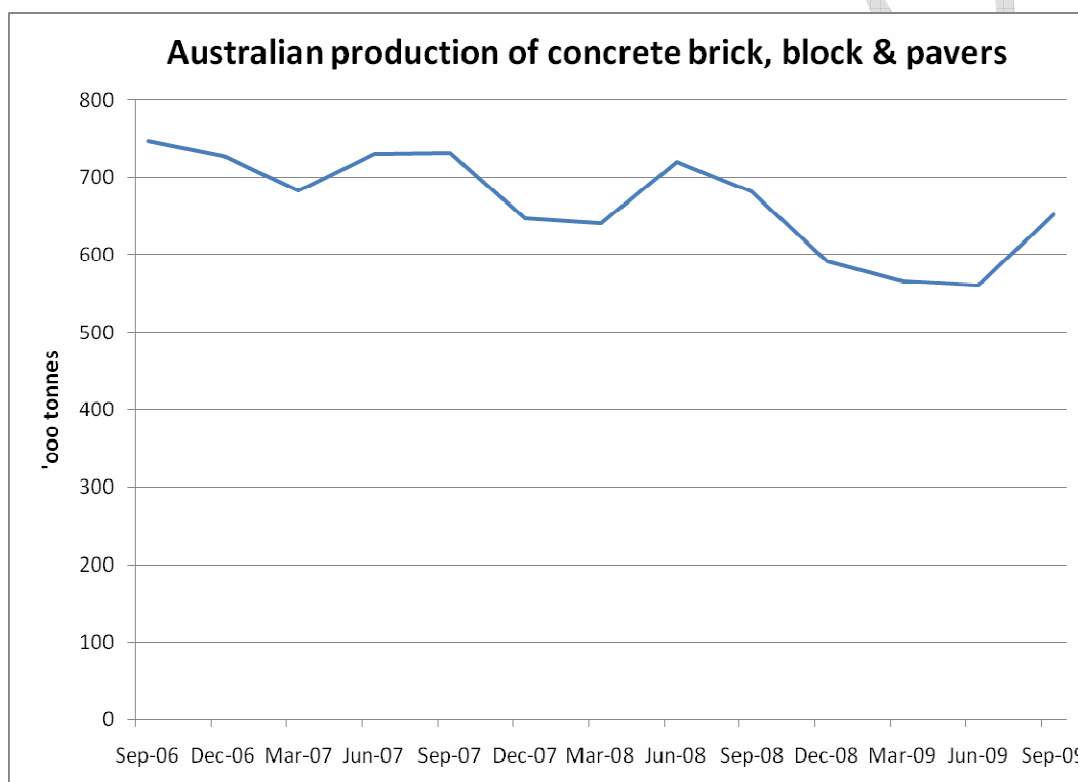
Customs and Border Protection therefore makes a preliminary finding that Tech Dry's loss of profits and profitability is attributable to the dumped imports.

## 8.7. Other possible causes of injury

Customs and Border Protection is required to consider whether injury to an industry is being caused or threatened by a factor other than the dumped imports<sup>26</sup>.

### 8.7.1. Global Financial Crisis

Customs and Border Protection is aware that the Global Financial Crisis (GFC) broadly affected the Australian economy from the second half of 2008. Customs and Border Protection obtained data from the Australian Bureau of Statistics for the production of concrete bricks, blocks and pavers in Australia from September 2006 to September 2009 (attached at **non-confidential attachment 1**). The following graph summarises the data:



Source: Australian Bureau of Statistics

The graph shows that production volume decreased from June 2008 through to June 2009, before recovering in September 2009 to a level equal to that of prior to the GFC.

Despite any effects the GFC may have had on the production volumes of concrete blocks and pavers, the market for SECA grew in 2007-08 and 2008-09. One possible explanation for this is that concrete manufacturers, and other users of concrete

<sup>26</sup> Subsection 269TAE(2A)

# PUBLIC RECORD

admixtures, changed to SECA products from the traditional fatty acid-based admixtures as awareness of the product grew. BASF was able to gain new SECA customers during 2008-09 at a time when overall concrete blocks, bricks and pavers manufacture declined. This supports the view that the GFC was not the cause of Tech Dry's injury.

## **8.7.2. Competition from substitutable products**

Customs and Border Protection understands that fatty-acid based concrete admixtures are substitutable for SECA. Fatty-acid based products are significantly cheaper than SECA products. Both the Australian industry and BASF claim that these products are not as durable as silicone-based admixtures for the purpose that SECA has been developed.

In response to the end user questionnaire Adbri stated that its South Queensland branches had changed from Block Emulsion to Darapel (a fatty acid-based admixture) in 2006, before changing to Rheopel Plus in 2008. Adbri stated that the reason for the change to Darapel, and then Rheopel Plus, was price. Customs and Border Protection considers that this supports a view that the SECA product is preferred to the fatty acid-based product, as long as the price is competitive.

Another end user that responded to the questionnaire stated that it has always used the Tech Dry product for its SECA applications. It claimed that Tech Dry's performance and customer service was superior to that of the imported product.

## **8.7.3. Entry of a competitor to a monopolistic market**

BASF Australia stated that another potential cause of any injury to Tech Dry in the form of loss of profits or price suppression is that Tech Dry held a monopoly in the market for SECA prior to the entry of BASF's product<sup>27</sup> into the Australian market. Customs and Border Protection notes that the competition is in the form of imports at dumped prices, and therefore this factor would not be viewed as an alternative cause of injury to the Australian injury.

## **8.8. Summary – Causal link**

Customs and Border Protection considers that the evidence set out in this section provides sufficient grounds to conclude that, in some instances, the Australian industry has been unable to match prices of the imported product and it has therefore lost sales volume. In addition, customers of the Australian industry have used prices of SECA from the USA to negotiate lower prices from the Australian industry. Both these factors have led to the Australian industry experiencing material injury.

Customs and Border Protection makes a preliminary finding that dumped imports of SECA exported to Australia from the USA have caused material injury to Tech Dry, the Australian industry producing like goods.

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<sup>27</sup> Public record 2009/029451-03, folios 145 to 148

## 9. WILL DUMPING AND MATERIAL INJURY CONTINUE?

### 9.1. Preliminary findings

Customs and Border Protection makes a preliminary finding that exports of SECA from the USA in the future may be at dumped prices and that continued dumping may cause further material injury to the Australian industry.

### 9.2. Introduction

When the Minister is satisfied that material injury to an Australian industry has been caused by dumping, anti-dumping measures may be imposed on future exports of like goods if the Minister is satisfied that the dumping and material injury may continue.

### 9.3. Customs and Border Protection's assessment

#### 9.3.1. Will dumping continue?

It is apparent from Customs and Border Protection's dumping analysis that all SECA exported from the USA during the investigation period were found to be at dumped prices, with a dumping margin of 110%.

It is noted that exports to Australia have grown over the injury analysis period, with BASF displacing the Australian industry as the preferred SECA supplier for at least one major customer. Customs and Border Protection also notes that BASF's export price to BASF Australia is determined according to a standard internal pricing arrangement.

In view of the factors existing in the Australian market for SECA and the supply arrangements for the imported product, Customs and Border Protection considers that dumping will continue if anti-dumping measures are not imposed.

#### 9.3.2. Will material injury continue?

Customs and Border Protection has reviewed the Australian industry's performance over the injury analysis period and has made a preliminary finding that SECA exported at dumped prices has caused material injury to the Australian industry for SECA.

Customs and Border Protection considers that a continuation of price competition from dumped imports from the USA is likely to have a continuing adverse impact on the Australian industry. Customs and Border Protection considers that this impact may be particularly evident in price depression, reduced profits and profitability, and potentially lost sales volume. This is evidenced by the recent reduction in price to some of Tech Dry's major customers (in one case to a level below the cost to make and sell), and the loss of a customer in one region that could have implications for other regions serviced by that customer nationally.

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Based on the available evidence, Customs and Border Protection makes a preliminary finding that exports of SECA from the USA in the future may be at dumped prices and that continued dumping may cause further material injury to the Australian industry.

PUBLIC RECORD

## 10. NON-INJURIOUS PRICE

### 10.1. Preliminary findings

Customs and Border Protection makes a preliminary finding that the non-injurious price (NIP) can be established by reference to Tech Dry's selling prices at a time unaffected by dumping, being 2007-08.

### 10.2. Introduction

Dumping duties may be applied where it is established that dumped imports have caused or threaten to cause injury to the Australian industry producing like goods. The level of dumping duty cannot exceed the margin of dumping, but a lesser duty may be applied if it is sufficient to remove the injury. This lesser duty provision is contained in the World Trade Organisation Anti-Dumping Agreement and the Tariff Act<sup>28</sup>.

The calculation of the NIP provides the mechanism whereby this lesser duty provision is given effect. The NIP is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping<sup>29</sup>.

Anti-dumping duties are based on FOB prices in the country of export. Therefore a NIP is calculated in FOB terms for the country of export.

### 10.3. Unsuppressed selling price

Customs and Border Protection generally derives the NIP by first establishing a price at which the local industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP).

Customs and Border Protection's preferred approach to establishing a USP observes the following hierarchy:

1. industry selling prices at a time unaffected by dumping;
2. constructed industry prices – industry cost to make and sell plus profit; or
3. selling prices of un-dumped imports.

Having calculated the USP, Customs and Border Protection then calculates a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into store costs and amounts for importer expenses and profit.

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<sup>28</sup> Subsection 8(5A) of the Tariff Act

<sup>29</sup> The NIP is defined in section 269TACA

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## 10.4. Australian industry

Tech Dry advised that its prices in the 2007-08 year were not affected by SECA from the USA. Although some SECA imported from the USA was present in the Australian market from late 2007, the imported product was new to the market and Tech Dry was not aware of any price competition until during 2008-09.

## 10.5. Customs and Border Protection's assessment

### 10.5.1. USP

Customs and Border Protection considers that Tech Dry's selling prices in 2007-08, being the most recent period in which its prices were unaffected by dumping, are suitable for establishing a USP.

Customs and Border Protection therefore considers the most appropriate basis for the USP is to use Tech Dry's sale price in 2007-08, adjusted to reflect the increase in the CTMS between 2007-08 and 2008-09. The calculation is at **Confidential Appendix 6**.

### 10.5.1. NIP

Customs and Border Protection calculated the NIP by converting Tech Dry's average selling price in 2007-08 to a price adjusted to the imported goods concentration level of active ingredient and deducting from the USP the importation costs (such as port, clearance and into-store costs), ocean freight costs, selling, general and administrative costs, and a profit margin.

## 10.6. Comparison of the NIP to the export prices

Customs and Border Protection compared the NIP with the weighted average export prices of SECA exported from the USA during the investigation period. In doing the comparison, Customs and Border Protection adjusted the weighted average export price of the imported SECA to reflect a price equivalent to SECA with the same concentration of the active ingredient as Tech Dry's SECA.

The analysis found that the NIP was higher than the weighted average export prices of SECA exported from the USA. This analysis supports Customs and Border Protection's assessment that dumped SECA exported to Australia from the USA have caused material injury to Tech Dry.

**11. CUSTOMS AND BORDER PROTECTION'S ASSESSMENT**

Customs and Border Protection has made a preliminary finding that the dumping of imports of SECA exported to Australia from the USA has caused material injury to the Australian industry producing like goods.

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## 12. ATTACHMENTS

Non-confidential attachment 1	ABS data for production of concrete block, brick and pavers
Confidential appendix 1	Australian market
Confidential appendix 2	Export price calculation
Confidential appendix 3	Normal value calculation
Confidential appendix 4	Dumping margin calculation
Confidential appendix 5	Price undercutting analysis
Confidential appendix 6	NIP calculation

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