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

CUSTOMS ACT 1901 - PART XVB

TRADE MEASURES BRANCH

REPORT TO THE MINISTER NO.150

SILICONE EMULSION CONCRETE ADMIXTURES

FROM

THE UNITED STATES OF AMERICA

17 MARCH 2010

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Australian Government
Australian Customs and
Border Protection Service

Customs Act 1901 - Part XVB

Silicone emulsion concrete admixtures

United States of America

Finding in relation to an investigation into alleged dumping

Notice under section 269TG(1) and section TG(2)

The Australian Customs and Border Protection Service (Customs and Border Protection) has completed its investigation into the alleged dumping of silicone emulsion concrete admixtures (SECA), classified to tariff subheading 3824.40.00, statistical code 09, in Schedule 3 of the *Customs Tariff Act 1995* exported to Australia from the United States of America (USA) (the goods).

In Trade Measures Report No. 150 (REP 150) Customs and Border Protection recommended the publication of dumping duty notices in respect of the goods. REP 150 outlines the investigations carried out by Customs and Border Protection, a statement of the reasons for the recommendations contained in REP 150, material findings of fact or law on which Customs and Border Protection's recommendations were based and particulars of the evidence relied on to support the findings.

Particulars of the dumping margin established for the exporter and an explanation of the methods used to compare export prices and normal values to establish the dumping margin are set out in the following table:

Exporter	Dumping Margin	Method to establish dumping margin
BASF Construction Chemicals LLC	110%	Weighted average export prices were compared with weighted average corresponding normal values over the investigation period in terms of subsection 269TACB(2)(a) of the <i>Customs Act 1901</i> . A weighted average dumping margin for SECA exported to Australia in the investigation period was then calculated.

Customs and Border Protection had regard to all information available in establishing variable factors relevant to the calculation of interim dumping duty for all other exporters.

REP 150 should be read in conjunction with this notice and is available on request from the Trade Measures Office, Customs and Border Protection, Canberra, telephone (02) 6275 6547 or on the internet at www.customs.gov.au.

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I, BRENDAN O'CONNOR, Minister for Home Affairs, have considered, and accepted, the recommendations of Customs and Border Protection, the reasons for the recommendations, the material findings of fact on which the recommendations are based and the evidence relied on to support those findings in REP 150. I am satisfied, as to the goods exported to Australia, that the amount of the export price of the goods is less than the normal value of those goods and because of that, material injury to the Australian industry producing like goods would or might have been caused if securities had not been taken. Therefore under s.269TG(1) of the *Customs Act 1901*, I DECLARE that section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* applies to:

- the goods; and
- like goods that were exported to Australia after 26 November 2009 (when the CEO made a Preliminary Affirmative Determination under section 269TD(4)(a) of the *Customs Act 1901* that there appeared to be sufficient grounds for the publication of a dumping duty notice) but before publication of this notice;

to the extent permitted by s.269TN of the *Customs Act 1901*.

I am also satisfied that the amount of the export price of like goods that have already been exported to Australia 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 caused. Therefore under s.269TG(2) of the *Customs Act 1901*, I DECLARE that section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* applies to like goods that are exported to Australia after the date of publication of this notice.

This declaration applies in relation to all exporters of the goods and like goods from the USA.

The considerations relevant to my determination of material injury to the Australian industry caused by dumping are the size of the dumping margins, the effect of dumped imports on prices in the Australian market in the form of price undercutting, price depression and the consequent impact on the Australian industry including loss of market share, loss of sales volume, loss of profits and reduced profitability. In making my determination I have considered whether any injury to the Australian industry is being caused or threatened by a factor other than the exportation of dumped goods, and have not attributed injury caused by other factors to the exportation of those dumped goods.

Interested parties, as defined by subsection 269T(1) of the *Customs Act 1901*, may seek a review of this decision by lodging an application with the Trade Measures Review Officer, in accordance with the requirements in Division 9 of Part XVB of the *Customs Act 1901*, within 30 days of the publication of this notice.

Particulars of the export prices, non-injurious prices, and normal values of the goods as ascertained will not be published in this notice as they may reveal confidential information.

Enquiries concerning this notice may be directed to the case manager on telephone number (02) 6275 6544, fax number (02) 6275 6990 or email tmops1@customs.gov.au.

Dated this 31st day of March, 2010.



BRENDAN O'CONNOR
Minister for Home Affairs

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ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
Adbri	Adbri Masonry
AUSFTA	Australia United States Free Trade Agreement
Austral	Austral Masonry
Australian industry	the Australian industry producing SECA
BASF	BASF Construction Chemicals LLC
BASF Australia	BASF Construction Chemicals Australia Pty Ltd
Boral	Boral Cement
CEO	Chief Executive Officer of the Australian Customs and Border Protection Service
Customs and Border Protection	the Australian Customs and Border Protection Service
Dumping Duty Act	<i>Customs Tariff (Anti Dumping) Act 1975</i>
Grace	Grace Construction Products Pty Ltd
Minister	The Minister for Home Affairs
SECA	silicone emulsion concrete admixtures, the goods subject of the investigation
Sika	Sika Australia Pty Ltd
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

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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 final report sets out the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service's (Customs and Border Protection) recommendations to the Minister for Home Affairs (the Minister) in relation to the application.

1.1. Recommendation

The CEO recommends to the Minister that dumping duty notices be published in respect of SECA exported to Australia from the USA.

If the Minister accepts this recommendation, to give effect to the decision, the Minister must sign the relevant notices, being notices under sections 269TG(1) and 269TG(2) of the *Customs Act 1901*¹, and section 8 of the *Customs Tariff (Anti Dumping) Act 1975* (the Dumping Duty Act).

1.2. Application of law to facts

1.2.1. Authority to make decision

Division 2 of Part XVB of the Act 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 delegate was satisfied that the application was made in the prescribed manner by a person entitled to make the application².

¹ 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.

² Section 269TB

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1.2.3. Initiation of investigation

After examining the application, the delegate was satisfied that:

- there is an Australian industry in respect of like goods; and
- 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 goods³.

The delegate decided not to reject the application and notice of the initiation of this investigation was published on 14 August 2009⁴.

1.2.4. Preliminary Affirmative Determination

The delegate, after having regard to the application and submissions, was satisfied that there were sufficient grounds for the publication of a dumping duty notice in respect of SECA exported to Australia from the USA and made a preliminary affirmative determination (PAD 150)⁵ to that effect on 26 November 2009.

The delegate decided to require and take securities⁶ in respect of any interim dumping duty that may become payable in respect of the goods from the USA that were entered into home consumption on or after 26 November 2009.

1.2.5. Statement of essential facts

On 1 February 2010, the CEO placed on the public record a statement of the facts on which the CEO proposed to base his recommendation to the Minister concerning the publication of a dumping duty notice (SEF 150).

Interested parties were invited to lodge submissions to SEF 150 by no later than 22 February 2010. One submission was received in response, from the importer of the goods. A non-confidential version of the submission is on the public record.

1.2.6. Final report

Within 155 days after the initiation of an investigation, or such longer period as the Minister allows⁷, the CEO must give the Minister a report in respect of the goods the subject of the application.

³ Subsection 269TC(1)

⁴ Subsection 269TC(4)

⁵ Section 269TD

⁶ Section 42

⁷ If the date by which the statement of essential facts must be placed on the public record is extended, this extends the date by which the final report is due to the Minister by a corresponding period.

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For this investigation, the Minister granted a 28 day extension to the date by which SEF 150 had to be placed on the public record. The CEO's final report is due to the Minister by 17 March 2010.

In formulating the final report the CEO must have regard to the application concerned, any submissions concerning publication of the notice to which the delegate has had regard for the purpose of formulating SEF 150, SEF 150, any submission in response to SEF 150 that is received by Customs and Border Protection within 20 days after the that statement was placed on the public record, and any other matters considered relevant⁸.

1.3. Findings and conclusions

The recommendations contained in Section 12 are based on the following findings and conclusions:

1.3.1. Australian industry (Section 4 of this report)

- there is an Australian industry producing like goods;

1.3.2. Dumping (Section 6 of this report)

- the export price for BASF Construction Chemicals LLC (BASF) can be calculated under s.269TAB(1)(a);
- the 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);
- the goods exported by BASF from the USA to Australia during the investigation period were dumped;
- the dumping margin was 110%, which is not negligible; and
- the volume of dumped goods was not negligible.

1.3.3. Injury (Section 7 of this report)

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

- a decline in market share;
- lost sales volume;
- price depression; and

⁸ Subsection 269TEA(3)

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- reduced profit and profitability.

1.3.4. Causation (Section 8 of this report)

During the investigation period dumped imports of the goods from the USA caused material injury to the Australian industry:

- the selling prices of SECA imported from the USA undercut the Australian industry's prices by significant margins throughout the investigation period;
- customers of the Australian industry used import prices from the USA to negotiate lower prices from the Australian industry; and
- in some instances the Australian industry was unable to match import prices from the USA, resulting in customers switching to the imported product.

1.3.5. Will dumping and material injury continue (Section 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.

1.3.6. Material injury if securities had not been taken (Section 10 of this report)

- Material injury to the Australian industry would or might have been caused if a security had not been taken.

Based on these findings the delegate recommends to the Minister that dumping duty notices be published in respect of SECA exported from the USA to Australia.

If the Minister accepts this recommendation, to give effect to the decision the Minister must publish the attached notices and declare by public notice that section 8 of the Dumping Duty Act applies:

- to the goods exported by all exporters from the USA after the CEO made a preliminary affirmative determination (26 November 2009), but before the publication of the notice⁹; and
- to like goods that are exported to Australia after the date of publication of the notice¹⁰.

⁹ In terms of section 269TG(1)

¹⁰ In terms of section 269TG(2)

2. BACKGROUND

2.1. Initiation

On 22 July 2009, Tech Dry lodged an application¹¹. 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 by following the anti-dumping link.

The investigation period is 1 July 2008 to 30 June 2009. Exports to Australia of the goods during that period were examined to determine whether dumping had occurred. The period from 1 July 2005 was examined for injury analysis.

2.2. PAD 150

On 26 November 2009, the delegate publicly notified that a preliminary affirmative determination 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 (PAD 150).

The delegate also gave public notice that the delegate was satisfied that it was necessary to require and take securities to prevent material injury to the Australian industry occurring while the investigation continued¹².

¹¹ Under section 269TB

¹² Pursuant to subsection 269TD(5)

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The delegate 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 2009¹³.

PAD 150 is on the public record.

2.3. SEF 150

The initiation notice advised that the statement of essential facts 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 statement of essential facts.

The Minister extended the deadline for the publication of the statement of essential facts, by 28 days to 31 January 2010¹⁴. ACDN No. 2009/40 was issued on 23 November 2009 notifying of the Minister's decision and interested parties were also separately notified.

SEF 150 was published on 1 February 2010 and is on the public record. Interested parties were invited to lodge submissions to SEF 150 by 22 February 2010.

One submission was received in response to SEF 150, from BASF Australia, an importer of the goods. In its response to the SEF 150, BASF Australia stated that while it supported the need for confidentiality, further disclosure was necessary for it to prepare an appropriate statement in response to SEF 150. BASF Australia requested, in particular, more indices showing the impact claimed by the applicant and found by the delegate. A non-confidential version of the submission is on the public record.

The delegate considers that SEF 150 provided as much information as possible on the economic performance of the Australian industry without breaching the commercial confidentiality of the parties. It considers that SEF 150 provided an adequate basis for interested parties to comment on the nature and extent of injury to the Australian industry and the possible causes of that injury.

2.4. Previous SECA cases

There have been no previous cases concerning SECA.

¹³ Pursuant to section 42

¹⁴ Pursuant to section 269ZHI

3. THE GOODS AND LIKE GOODS

3.1. Findings

Based on the information available, the delegate finds 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.

The delegate therefore finds that the SECA produced by Tech Dry are like goods to the goods exported from the USA¹⁵.

3.2. The goods

The goods the subject of the application are silicone emulsion concrete admixtures (the goods). SECA is used for water-repellency and efflorescence control for concrete or similar cementitious products, including concrete block, concrete paving, retaining wall units, concrete roof tiles and pre-cast or pre-stressed concrete.

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, subject to the goods meeting the Australia-United States Free Trade Agreement (AUSFTA) Rules of Origin requirements.

3.4. Like goods

Like goods are defined 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'¹⁶.

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.

¹⁵ In terms of section 269T

¹⁶ Subsection 269T(1)

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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, octyltriethyloxysilane. The goods are physically alike even though the concentration levels of active ingredient are different for the locally produced and imported goods.

3.4.2. Commercial likeness

Commercial likeness refers to attributes identifiable from market behaviour.

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.

There is evidence of an end-user of the goods switching between the Australian product and the imported product. The Australian industry, exporter and importer have all stated that the Tech Dry product and the BASF product have the same end-use. For these reasons, 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 discussions with the exporter, the goods made in Australia and the goods the subject of the application are manufactured from similar raw materials using similar manufacturing processes.

3.4.5. Scope of like goods

In its response to SEF 150, BASF Australia submitted that fatty acid-based products and SECA were like products, and that replacing one for the other would not lead to any market growth. BASF Australia recommended that Customs and Border Protection treat SECA and fatty acid-based products as like products for the purpose of the investigation.

SECA and fatty acid-based products are not physically alike, a factor on which Customs and Border Protection usually places the most weight. The production processes are quite different.

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SECA was developed as a new, high-performance product that provides better functionality than traditional fatty acid-based products. It is more expensive to produce and is aimed at the high end of the market. For this and the reasons set out above, while there is downward substitutability on price, SECA is considered a distinct product in its own right. SECA and fatty acid-based products are not considered like goods in terms of the legislative definition.

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4. AUSTRALIAN INDUSTRY PRODUCING LIKE GOODS

4.1. Findings

Based on the information available, the delegate is satisfied that:

- the SECA manufactured or produced by Tech Dry are like goods (see section 3);
- a substantial process of manufacture was carried out in Australia by Tech Dry in producing the like goods¹⁷;
- the like goods were therefore wholly or partly manufactured in Australia; and
- there is an Australian industry consisting of persons who produce like goods in Australia¹⁸, comprising Tech Dry which is the sole manufacturer of SECA in Australia.

4.2. Manufacturing/production process

Tech Dry claimed that it is the sole manufacturer of SECA in Australia. No other interested party has disputed this, nor has any other person or firm claimed to be an Australian producer of SECA.

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 Australia¹⁹.

A verification visit to Tech Dry was undertaken, which included a tour of its manufacturing facility. The verification team reviewed the associated production costs as detailed in the Australian industry visit report, which is on the public record.

On the basis of the available information the delegate is satisfied 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.

¹⁷ In terms of subsection 269T(3)

¹⁸ In terms of subsection 269T(4)

¹⁹ Subsections 269T(2) and 269T(3)

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5. AUSTRALIAN MARKET

5.1. Market Structure

The market for all concrete admixture products in Australia comprises five sectors:

- normal pre-mixed concrete, such as for driveways and footpaths;
- manufactured concrete products 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).

SECA is principally used in the manufactured concrete products sector. There are three main products in the admixture range for manufactured concrete 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 two suppliers of SECA to the Australian market are Tech Dry and BASF Australia.

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.

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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

5.3.1. Analysis

Australian industry sales data has been combined with data gathered from BASF Australia to estimate the size of the Australian market for SECA during the injury analysis 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 analysis 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.

5.3.2. Submission in response to SEF 150

BASF Australia submitted that the finding of growth in the SECA market during the injury analysis period is erroneous. BASF Australia recommended treating SECA and fatty acid-based substitutes as like products. It claimed that this approach would show that there was no growth in the market for such products, and that increased demand for SECA was the result of users substituting SECA for the fatty acid-based products.

SECA and fatty acid-based products are substitutes and the two products have the capacity to take market share away from each other. Customs and Border Protection has been conscious of this in its assessment of changes in market share and whether such changes are attributable to the dumping or whether they are the result of consumers switching to SECA from other products.

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6. DUMPING INVESTIGATION

6.1. Findings

The delegate is satisfied and finds that:

- the export price for the goods should be established using the invoiced price of the goods from BASF to BASF Australia;
- the normal value of goods sold by BASF on the domestic market should be established using domestic selling prices, with appropriate adjustments made for the difference in credit terms, selling, general and administrative expenses, domestic royalties, inland transport and bad debt;
- by comparing the weighted average export prices during the investigation period with the weighted average normal values during the same period, the goods exported by BASF during the investigation period were dumped, with a dumping margin of 110%. The dumping margin is not negligible; and
- the volume of dumped goods was 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 section addresses the issue of whether SECA was exported from the USA to Australia 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, the investigation team conducted a search of Customs and Border Protection's import database and did not identify any other importers of SECA.

A verification visit to BASF Australia was conducted. The visit report is on the public record.

6.4. Exporters

6.4.1. BASF

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

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

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Export Price

The goods were imported by BASF Australia.

The delegate is satisfied that:

- BASF manufactured and exported SECA to Australia during the investigation period;
- the goods were exported to Australia otherwise than by the importer and were purchased by the importer from the exporter; and
- the sales by BASF to BASF Australia were arms length transactions²⁰. Although BASF and BASF Australia are related entities, the investigation team did not find any evidence to suggest that the price was influenced by that relationship.

The delegate 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.

The calculation of export price is at **Confidential Appendix 2**.

Normal Value

BASF sold like goods on the domestic market during the investigation period. As there was a sufficient volume of goods sold in the ordinary course of trade for home consumption in sales that were arms-length transactions, the delegate is satisfied that the normal value can be established (under subsection 269TAC(1)) using sales between BASF and its customers.

The normal value incorporated adjustments to ensure a fair comparison with export prices²¹.

The calculation of normal value is at **Confidential Appendix 3**.

Dumping Margin

A dumping margin for the investigation period was calculated 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 period²².

SECA exported by BASF from the USA to Australia during the investigation period was exported at dumped prices, with a dumping margin of 110%.

The calculation of the dumping margin is at **Confidential Appendix 4**.

²⁰ Section 269TAA

²¹ Subsection 269TAC(8)

²² In accordance with subsection 269TACB(2)(a)

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6.5. Level and volume of dumping

The CEO is required to terminate the investigation so far as it relates to an exporter if the dumping margin is negligible²³ (i.e. 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%). The dumping margin established for BASF is 110%, and therefore is not negligible.

The CEO is required to terminate the investigation so far as it relates to a particular country if the volume of dumped goods is negligible²⁴ (i.e. the volume of dumped goods is 3% or less of the total Australian import volume²⁵). 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, and therefore is not negligible.

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²³ Subsection 269TDA(1)

²⁴ Subsection 269TDA(3)

²⁵ In terms of subsection 269TDA(4)

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7. ECONOMIC CONDITION OF THE INDUSTRY

7.1. Findings

Based on an analysis of the information contained in the application, and verified during the investigation:

- Tech Dry has lost sales volume and market share;
- Tech Dry's unit selling price has not increase in line with cost increases;
- Tech Dry's weighted average sale price has decreased; and
- Tech Dry's total profits and profitability decreased in 2007-08 and 2008-09.

The delegate is satisfied and finds that Tech Dry has experienced material 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.

7.2. Introduction

This section reports on the economic condition of the Australian industry and provides an assessment as to whether Tech Dry has suffered material injury.

The data contained in this section is based on verified data from Tech Dry and Tech Link. The visit report is on the public record.

Tech Dry claims to have suffered 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.

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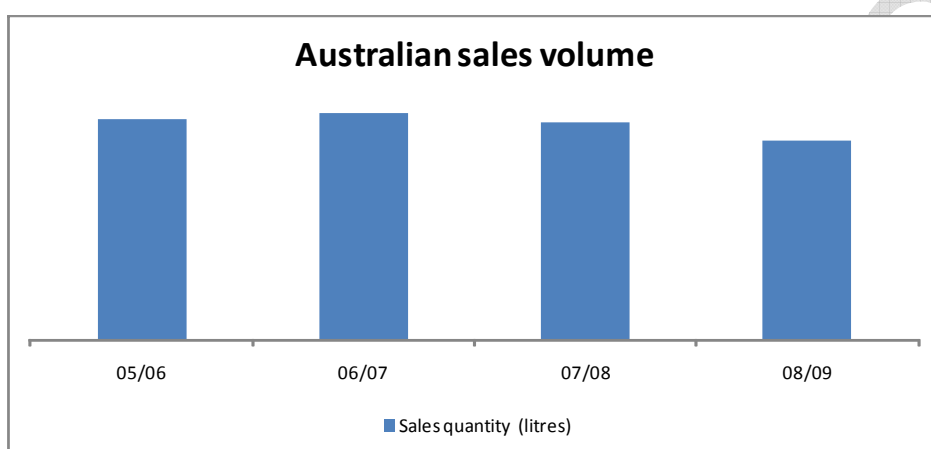
7.3. Commencement of injury

In the application, Tech Dry claimed that material injury attributable to the dumped exports of SECA from the USA commenced in late 2007. Following the verification team'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 to those imports until 2008-09.

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.

7.4.3. Conclusion – Loss of sales volume and market share

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

7.5. Price effects

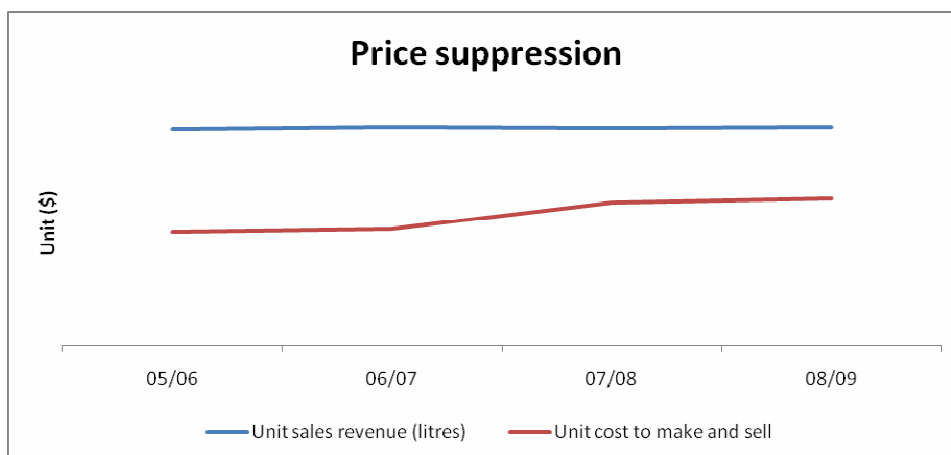
Price effects may be in the form of:

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- 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.

7.5.1. Price suppression

Tech Dry claims that it experienced price suppression. 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 7.4.1 above; however the applicant claimed that price reductions to existing customers occurred from June 2009. The following evidence was provided 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. Including the sales to Tech Link results in around 95% of Tech Dry's sales being included in the analysis.

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The weighted average sale price is based on sales of 1,000L containers, which represent an overwhelming 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.

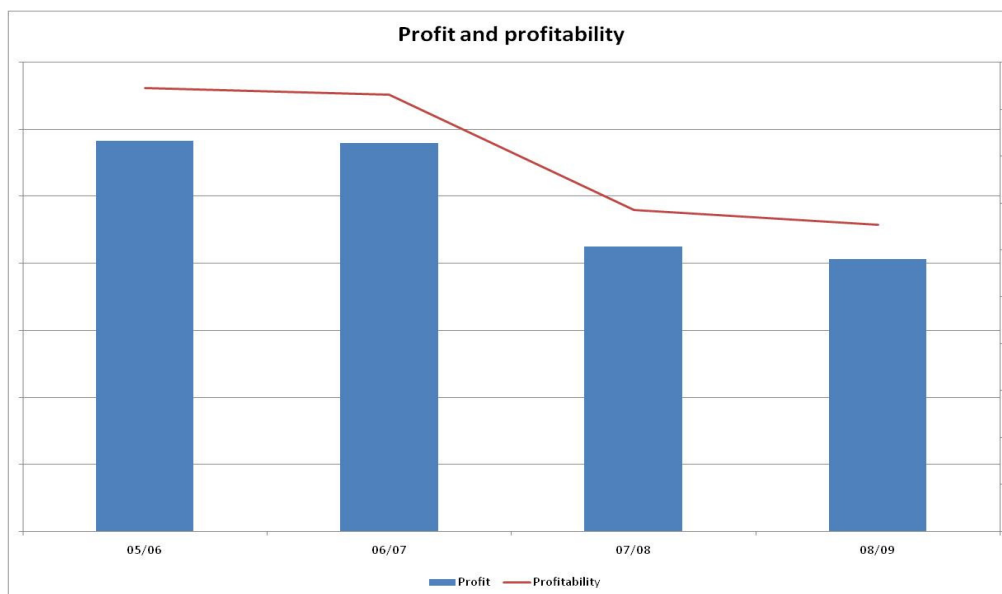
7.5.3. Conclusion - price suppression and depression

Based on the information verified during the investigation, 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.

7.6.1. Conclusion – Profit and profitability

Based on the information verified during the investigation, 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 factors²⁶. 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.

Each of these factors was discussed 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.

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.

²⁶ As described under subsection 269TAE(3)

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7.7.3. Capacity utilisation

Tech Dry 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)

Tech Dry 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

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

Tech Dry 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

Tech Dry 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.

7.7.10. 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.

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8. HAS DUMPING CAUSED MATERIAL INJURY?

8.1. Findings

The delegate is satisfied and finds that:

- the Australian industry has suffered material injury in the form of lost sales volume, lost market share, price depression, loss of profits and profitability;
- SECA exported to Australia from the USA at dumped prices caused material injury to the Australian industry. The dumped goods significantly undercut the price of the Australian product. The magnitude of the undercutting caused the Australian industry to reduce its prices. In some instances, the Australian industry was unable to match prices of the dumped imported product and therefore lost sales volume.

The investigation has not identified any other factor to which the injury could be attributed.

8.2. Introduction

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 hindered²⁷.

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 record²⁸. 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

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%.

²⁷ Section 269TG

²⁸ Public record 2009/029451-03, folios 139-144

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8.4. Price effects

8.4.1. Price undercutting

8.4.1.1. Analysis

Price undercutting occurs when the imported product is sold at a price below that of the Australian manufactured product. The selling prices of Tech Dry and Tech Link were compared 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.

The investigation found a close relationship between the prices Tech Link receives from its customers and the price Tech Link pays to Tech Dry. It is therefore considered appropriate for Tech Link's prices to its customers to be compared with the selling prices of BASF Australia.

As Tech Dry's product and the imported product are sold at different concentration levels, for the purpose of analysing injury, the selling prices were converted to a common concentration of the active ingredient.

The analysis demonstrated 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**.

8.4.1.2. Submissions in response to SEF 150

In its response to SEF 150, BASF Australia contended that it was inaccurate to compare the prices of locally produced and imported SECA by adjusting them to a common concentration of active ingredient. BASF Australia stated that this approach assumes that the two products are either the same, or have the same effectiveness, which may not necessarily be the case. BASF Australia stated that it believed that "equivalency" was best addressed by choosing the middle of the recommended dosage range for each product.

BASF Australia also drew Customs and Border Protection's attention to what it interpreted to be a statement by Adbri, a SECA end-user, that it changed from the Tech Dry SECA product to the BASF SECA product due to the lower dosage rates and, therefore, lower pricing of the BASF product.

No evidence, scientific or otherwise, was provided to show that it was inappropriate to compare prices of the products adjusted to an equivalent level of active ingredient.

Adbri stated that it changed suppliers because the BASF product was cheaper and required lower dosage rates. This statement is not interpreted to mean that the BASF product was cheaper only because of lower dosage rates required.

Nevertheless, an additional price undercutting analysis was undertaken based on dosage rates for a particular quantity of concrete. The analysis used the dosage rates of the

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BASF and Tech Dry SECA products suggested by BASF Australia in its response to SEF 150.

Even using the equivalent dosage rates suggested by BASF Australia, the analysis was only marginally different to the analysis based on a common level of active ingredient. The price of the BASF product still significantly undercut the prices of the Tech Dry product.

The undercutting analysis based on dosage rates is at **Confidential Appendix 7**.

8.4.2. Price depression

8.4.2.1. Analysis

As discussed at section 7.5.2 above, Tech Dry lowered its prices to some of its 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 the following information was provided:

- a copy of correspondence between Tech Dry and one major customer in relation to the reduced price. The correspondence is dated March 2009 and discusses BASF Australia's price, and Tech Dry's willingness to consider a price adjustment in order to compete with BASF Australia;
- 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, 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. The magnitude of the price undercutting by BASF is such that it is reasonable to conclude that the dumped goods would be highly attractive to consumers because of its price and that the price advantage would outweigh other purchasing considerations.

The investigation did not identify any factor other than competition with the price of the imported goods that would cause Tech Dry to lower its prices from June 2009 onwards.

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8.4.2.2. Submissions in response to SEF 150

In its response to SEF 150, BASF Australia proposed that the impact on Tech Dry's prices was attributable to pressure arising from the drop in the cement and concrete markets and not competition from its product. BASF Australia stated that it and other suppliers to the concrete manufacturing industry had been approached by end users of the products to reduce prices.

In support of this statement, BASF Australia provided a letter it claimed it received in February 2009 from an end-user of the SECA product. During further correspondence between Customs and Border Protection and BASF Australia in relation to the letter, BASF Australia clarified that the original request for price reduction was made verbally by the end user. BASF Australia advised that the letter attached to the submission was provided by the end user to BASF Australia at its request for the purpose of making the submission, but its existence was discussed during the verbal discussions that took place in or around February 2009.

BASF Australia also referred to the merger of a number of manufactured concrete product manufacturers in 2008 that it said allowed the merged entity to use its increased purchasing power to seek lower prices for major raw material and admixtures (including SECA).

Notwithstanding the lack of clarity surrounding the letter BASF Australia claimed it had received, it is reasonable to expect that concrete product manufacturers would have sought to maintain and, if possible, reduce costs following the impact of the global financial crisis.

However, in-confidence correspondence between Tech Dry and a major customer pertaining to the price reduction has been carefully examined. The delegate is satisfied that the correspondence provides strong evidence that the dumped price of SECA imported by BASF Australia caused the price reduction experienced by the Australian industry.

8.4.3. Price suppression

Tech Dry's 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 its own prices. 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, there is insufficient evidence to conclude 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.

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8.5. Volume effects

8.5.1. Loss of sales volume

8.5.1.1. Analysis

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 North Queensland branches of Adbri, one of its major customers, changed supplier from Tech Dry to BASF in late 2008. The following was provided in support of this claim:

- 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 2008²⁹.

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. As discussed at section 8.4.1.2 above, the delegate remains 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. This is illustrated in **Confidential Appendix 9**.

8.5.1.2. Submission in response to SEF 150

In its response to SEF 150, BASF Australia contended that Adbri North Queensland was the only customer that it had gained from Tech Dry. BASF Australia estimated that the Adbri North Queensland sales volume represented 8 to 9 percent of Tech Dry's total sales volume and submitted that such a reduction could not be seen as material.

The delegate considers that the sales volume of Tech Dry product lost to the imported product is significant in relation to its total sales. The information available supports the

²⁹ Public record 2009/029451-03, folios 149-150

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claim that the Australian industry has lost sales volume as a direct result of the dumped imports.

8.5.2. Loss of market share

8.5.2.1. Analysis

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, the investigation did not identify 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, the delegate is satisfied that Tech Dry's loss of market share to the extent represented by a major customer switching from Tech Dry to BASF, was due to the low price of the dumped imports.

8.5.2.2. Submission in response to SEF 150

In its response to SEF 150, BASF Australia stated that it was artificial and simplistic to regard increased sales of SECA as market growth when this was the result of consumers switching to SECA from fatty acid-based substitutes.

In a market for concrete products affected by the global financial crisis, the increase in the SECA market is most likely the result of users of fatty acid-based products substituting the imported SECA product, which was being offered at prices significantly below the price for SECA manufactured by Tech Dry.

It cannot be predicted whether customers that converted to SECA from the fatty acid-based products would return to such products or buy Tech Dry SECA if the BASF product was not available at dumped prices. Therefore, injury to the Australian industry through loss of market share has been assessed in terms of the major customer that switched directly from the Tech Dry product to the imported BASF product.

8.6. Profit effects

8.6.1. Reduced profit and profitability

8.6.1.1. Analysis

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.

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As discussed at section 8.5.1 above, the lost sales volume during the investigation period was found to be attributable to the dumped imports.

As discussed at section 8.4.2 above, Tech Dry reduced its price to major customers as a direct result of price competition from the dumped imports. Assuming that Tech Dry's costs remain at least at the same level as 2008-09, and there is no evidence to the contrary, the significance of the customers to Tech Dry supports a conclusion that the price reduction would have a material effect on Tech Dry's profits and profitability in the period from June 2009.

8.6.1.2. Submission in response to SEF 150

In its response to SEF 150, BASF Australia contended that Tech Dry's reduced profit and profitability could not be attributed to its imports of SECA. It stated that Tech Dry suffered injury in 2007-08 that was not claimed to be caused by dumped imports and this suggested that injury in 2008-09 was more likely to be self-inflicted and not associated with imports of the BASF SECA product.

As discussed in sections 8.4 and 8.5 above, Tech Dry lost sales volumes to one major customer and had to significantly lower prices to another major customer. On the available evidence, the impact on sales volumes and prices, and consequent loss of profits and profitability, was caused by the dumping of SECA from the USA.

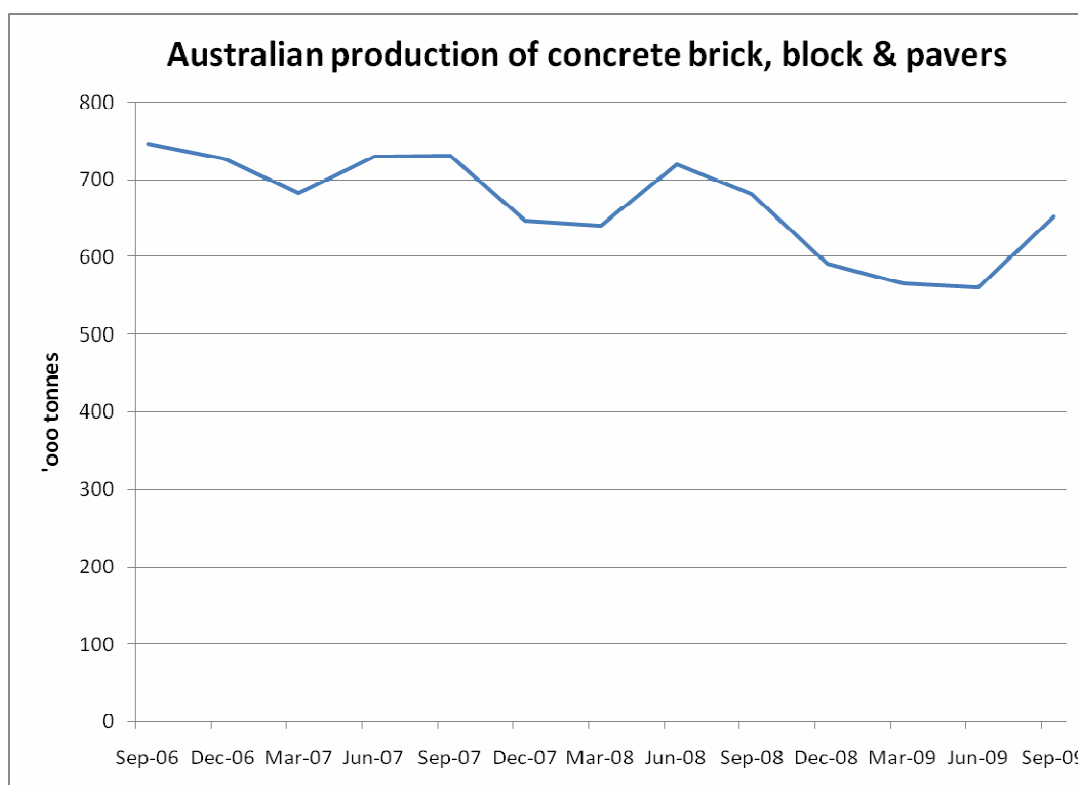
The delegate therefore finds that Tech Dry's loss of profits and profitability in 2008-09 is attributable to the dumped imports.

8.7. Other possible causes of injury

8.7.1. Global Financial Crisis

The global financial crisis broadly affected the Australian economy from the second half of 2008. Data was obtained 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:

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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 global financial crisis.

Despite any effects the global financial crisis may have had on the production volumes of concrete blocks and pavers, the market for SECA grew in 2007-08 and 2008-09. As discussed at section 5.3.2 above, a possible explanation for this is that concrete manufacturers, and other users of concrete 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 contradicts the statement by BASF Australia in its submission that the reduced demand for concrete led to a reduced demand for SECA. It supports the view that the global financial crisis was not an impediment to the growth in the market for SECA products, if sold at a price that was competitive with the fatty acid-based admixtures.

8.7.2. Competition from substitutable products

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 Tech Dry's product to Darapel (a fatty acid-based admixture) in 2006, before changing to BASF's SECA product in 2008. Adbri stated that the reason

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for the change to Darapel was price, and the change to BASF's SECA product was price and that it required a lower dosage rate in most cases. 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 product³⁰ into the Australian market. While this may be the case, competition was from imports at dumped prices, and therefore this factor would not be viewed as an alternative cause of injury to the Australian industry.

8.7.4. Business practices and efficiency of the Australian producer

In its response to SEF 150, BASF Australia claimed that the inability of the Australian industry to match prices of the imported product was not due to price undercutting but was instead caused by Tech Dry's cost intensive marketing structure, inflated prices and inefficient production.

Customs and Border Protection is not aware of any marketing, pricing or manufacturing practices of the Australian industry that would suggest that injury attributed to dumping as detailed above was, in fact, caused by a factor other than dumping.

³⁰ Public record 2009/029451-03, folios 145 to 148

9. WILL DUMPING AND MATERIAL INJURY CONTINUE?

9.1. Findings

In relation to like goods that may be exported to Australia in the future, there are reasonable grounds to be satisfied that they may be at dumped prices and the continued dumping may cause material injury to the Australian industry.

Continued price competition from dumped SECA from the USA is likely to have a continuing adverse effect on the Australian industry, particularly with respect to price and volume injury and the consequent negative impact on profits and profitability.

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. Assessment

9.3.1. Will dumping continue?

All SECA exported from the USA during the investigation period were found to be at dumped prices, with a dumping margin of 110%.

Exports to Australia have increased over the injury analysis period, with BASF displacing the Australian industry as the preferred SECA supplier for at least one major customer (see section 8.5.1.1 above). Price was a factor in the customer's decision to switch suppliers. This may motivate the exporter to continue to export to Australia at dumped prices. In addition, BASF's export price to BASF Australia is determined according to a standard internal pricing arrangement that has no regard to selling prices in the USA and is likely to result in dumping. There is no evidence to suggest that this practice will not continue.

For the reasons set out above, the delegate is satisfied that dumping may continue if anti-dumping measures are not imposed.

9.3.2. Will material injury continue?

The analysis of the Australian industry's performance over the injury analysis period shows that SECA exported at dumped prices has caused material injury to the Australian industry. A continuation of price competition from dumped imports from the USA is likely to have a continuing adverse impact on the Australian industry. This impact may be evident in price depression, reduced profits and profitability and potentially lost sales volume.

The recent price reductions 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 (which may have implications for other regions serviced by that customer nationally), supports a

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conclusion that continued dumping may cause further material injury to the Australian industry.

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10. MATERIAL INJURY IF SECURITIES HAD NOT BEEN TAKEN

10.1. Findings

The delegate is satisfied that if securities had not been required to be taken, material injury to the Australian industry would or might have been caused.

10.2. Introduction

The Minister may impose anti-dumping measures when he is satisfied that, as to any goods that have been exported to Australia:

- the export price of the goods is less than the amount of the normal value of those goods; and
- because of that, in a case where a security has been taken, material injury to an Australian industry producing like goods would or might have been caused if the security had not been taken³¹.

10.3. Assessment

On 26 November 2009, the delegate, after having regard to the application and submissions, was satisfied that there were sufficient grounds for the publication of a dumping duty notice in respect of SECA exported to Australia from the USA and made a preliminary affirmative determination to that effect.

The delegate decided to require and take securities³² in respect of any interim dumping duty that may become payable in respect of the goods from the USA that were entered into home consumption on or after 26 November 2009.

Taking into account its assessment of dumping, injury and causal link set out in sections 6, 7 and 8 of this report, the delegate is satisfied that material injury to an Australian industry producing like goods would or might have been caused if the security had not been required to be taken.

³¹ Section 269TG(1)

³² Section 42

11. ANTI-DUMPING MEASURES

11.1. Findings

The delegate is satisfied that the non-injurious price can be established by reference to Tech Dry's selling prices at a time unaffected by dumping, being 2007-08.

11.2. Introduction

Dumping duties may be applied where it is established that dumping has 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.

The calculation of the non-injurious price provides the mechanism whereby this lesser duty provision is given effect. The non-injurious price is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping³³.

Anti-dumping duties are based on Free On Board prices in the country of export. Therefore a non-injurious price is calculated in Free On Board terms for the country of export.

11.3. Unsuppressed selling price

The non-injurious price is derived 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.

Customs and Border Protection's preferred approach to establishing an unsuppressed selling price 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 unsuppressed selling price, a non-injurious price is calculated by deducting the costs incurred in getting the goods from the export Free On Board 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.

³³ The non-injurious price is defined in section 269TACA

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11.4. 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.

11.5. Assessment

11.5.1. Unsuppressed selling price

11.5.1.1. Analysis

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 an unsuppressed selling price.

In SEF 150, the delegate considered the most appropriate basis for the unsuppressed selling price was to use Tech Dry's sale price in 2007-08, adjusted to reflect the increase in the cost to make and sell between 2007-08 and 2008-09. In view of the uncertainty as to whether the price suppression experienced by Tech Dry was caused by dumping (section 8.4.3 above), it is now not considered appropriate to adjust Tech Dry's 2007-08 sale price for increased costs. The calculation of the unsuppressed selling price is at **Confidential Appendix 6**.

11.5.1.2. Submission in response to SEF 150

In its response to SEF 150, BASF Australia claimed that the unsuppressed selling price should be the price achieved by all SECA suppliers, including the selling prices of imported SECA sold prior to the commencement of injury and before dumping was unequivocally identified.

The unsuppressed selling price is used to derive the minimum price necessary to prevent dumping causing injury to the Australian industry. Although Tech Dry stated that the selling prices of imported SECA did not cause injury to the Australian industry in 2007-08, this was likely to be because the BASF product was new to the market and its pricing was not highly transparent. This does not indicate that the pricing of imported SECA in 2007-08 did not have the capacity to cause injury to the Australian industry.

For this reason, it is considered appropriate to base the unsuppressed selling price on the Australian industry's selling prices.

In its response to SEF 150, BASF Australia also made a submission concerning the unsuppressed selling price that it considered commercially confidential. That submission, which the delegate does not agree with, is discussed at **Confidential Appendix 8**.

11.5.1. Non-injurious price

The non-injurious price was calculated 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

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- deducting from the unsuppressed selling price the importation costs (such as port, clearance and into-store costs), ocean freight costs, selling, general and administrative costs, and a profit margin.

In its response to SEF 150, BASF Australia stated that a zero rate of general customs duty is only applicable under the AUSFTA if the goods in question fulfil the criteria laid down in that agreement. BASF Australia stated that the agreement requires the exporter to provide the importer with a certificate of origin to claim the duty free rate. BASF Australia claimed that there were a lot of conditions to be met before the goods can enjoy the duty free treatment and that by not deducting the standard duty rate from the unsuppressed selling price, the importer would effectively pay the standard duty rate twice if the grounds for duty exemption were not met.

Importers of SECA manufactured in the USA are likely to be eligible to claim the zero rate of general customs duty. On this basis, it is not appropriate to deduct an amount for customs duty from the unsuppressed selling price.

If an importer did not claim, or was not eligible for, the zero rate of general customs duty under the AUSFTA, it could apply for a final duty assessment that would take into account the actual circumstances of each importation, including whether general customs duty had been paid, and receive a refund of any interim dumping duty overpaid.

11.6. Comparison of the non-injurious price to the export prices

The non-injurious price was compared with the weighted average export prices of SECA exported from the USA during the investigation period. In doing the comparison, the weighted average export price of the imported SECA was adjusted to reflect a price equivalent to SECA with the same concentration of the active ingredient as Tech Dry's SECA.

The non-injurious price was higher than the weighted average export prices of SECA exported from the USA. This analysis supports the conclusion that dumped SECA exported to Australia from the USA caused material injury to Tech Dry.

11.7. Interim dumping duties

An interim dumping duty may be ascertained:

- as a proportion of the export price; or
- by reference to a measure of the quantity; or
- by a combination of these methods.

The delegate recommends that the interim dumping duty be expressed as an amount per litre.

In determining the amount of interim dumping duty payable, the Minister must ascertain an export price, a normal value and a non-injurious price for the goods. The interim duty is based on the difference between the ascertained export price and the lower of the ascertained normal value and the ascertained non-injurious price.

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The calculation of the export price for BASF is at confidential appendix 2.

The calculation of the normal value for BASF is at confidential appendix 3.

No exports of the goods during the investigation period were identified other than those by BASF. The delegate recommends that the Minister determine the amount of interim dumping duty payable by all other exporters by reference to the export price and normal value calculated for BASF.

The calculation of the non-injurious price is at **Confidential Appendix 6**.

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12. RECOMMENDATIONS

The delegate is satisfied that the dumping of imports of SECA exported to Australia from the USA caused material injury to the Australian industry producing like goods. The delegate recommends that the Minister impose country-wide anti-dumping measures on SECA exported to Australia from the USA.

The delegate recommends the Minister be satisfied:

- the weighted average of export prices of SECA over the investigation period is less than the weighted average of corresponding normal values over the investigation period in respect of SECA exported to Australia from the USA by BASF³⁴;
- the amount of the export price of SECA that have been exported to Australia by from the USA by BASF is less than the amount of the normal value of those goods and because of that, material injury to the Australian industry producing like goods has been, or is being caused³⁵; and
- the amount of the export price of SECA exported to Australia from the USA, is less than the amount of the normal value of those goods and the export price of the goods that may be exported to Australia from the USA 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 threatened³⁶;
- material injury to the Australian industry producing like goods would or might have been caused if a security had not been required to be taken.

The delegate recommends the Minister determine:

- by comparison of the weighted average of export prices during the investigation period and the weighted average of normal values during that period, that exports of SECA from the USA by BASF were dumped³⁷.

The delegate recommends the Minister direct:

- the price paid or payable for like goods sold by BASF be taken to be such a price adjusted for differences between domestic and export sales to ensure a fair comparison³⁸; and

³⁴ Subsection TACB(4)

³⁵ Subsection TG(1)

³⁶ Subsection TG(2)

³⁷ Subsection 269TACB(1)

³⁸ Subsection 269TAC(8)

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- that the element of interim dumping duty payable on SECA the subject of a notice³⁹ be ascertained by reference to a measure of quantity (in litres) of those particular goods⁴⁰.

The delegate recommends the Minister compare:

- 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 period⁴¹.

The delegate recommends the Minister declare:

- by public notice⁴², that section 8 of the Dumping Duty Act applies:
 - to the goods exported by all exporters from the USA, to the extent permitted⁴³; and
 - to like goods that were exported to Australia by all exporters from the USA after the CEO made a PAD⁴⁴ on 26 November 2009 but before publication of the notice, to the extent permitted⁴⁵.
- by public notice, that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia by all exporters from the USA after the date of publication of the notice⁴⁶.

³⁹ Under subsections 269TG(1) or (2)

⁴⁰ Subsection 8(5) of the Dumping Duty Act

⁴¹ Subsection 269TACB(2)(a)

⁴² Subsection 269TG(1)

⁴³ Subsection 269TN

⁴⁴ Subsection 269TD

⁴⁵ Subsection 269TN

⁴⁶ Subsection 269TG(2)

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13. 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	Non-injurious price calculation
Confidential appendix 7	Price undercutting analysis using dosage rates
Confidential appendix 8	Response to BASF Australia's confidential submission in relation to unsuppressed selling price
Confidential appendix 9	Calculation of lost sales volume