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

CUSTOMS ACT 1901 - PART XVB

TRADE MEASURES BRANCH

REPORT No. 162

**REINVESTIGATION OF CERTAIN FINDINGS
IN REPORT No. 145**

GEOSYNTHETIC CLAY LINERS

EXPORTED FROM

GERMANY

20 August 2010

CONTENTS

1	SUMMARY AND RECOMMENDATIONS	2
1.1	RECOMMENDATION	2
1.2	REASONS	2
2	BACKGROUND	4
2.1	ORIGINAL INVESTIGATION	4
2.2	REVIEW OF A MINISTERIAL DECISION BY THE REVIEW OFFICER	5
2.3	REINVESTIGATION BY CUSTOMS AND BORDER PROTECTION	5
2.4	THE REINVESTIGATION REPORT	6
3	REINVESTIGATION FRAMEWORK	7
4	BACKGROUND INFORMATION FROM REP 145	8
5	MATERIAL INJURY TO THE AUSTRALIAN INDUSTRY CAUSED BY DUMPING	9
5.1	SUMMARY OF REINVESTIGATION FINDINGS.....	9
5.2	THE ORIGINAL INVESTIGATION	9
5.3	ISSUES IDENTIFIED BY THE REVIEW OFFICER.....	9
5.4	DATA PERIODS.....	10
5.5	APPROACH TO ASSESSING MATERIAL INJURY	10
5.6	THE AUSTRALIAN MARKET.....	11
5.7	COMPARISON OF MODELS	12
5.8	COMPETITION IN THE MARKET	12
5.9	INDUSTRY COST AND PRICE DATA	12
5.10	HAS DUMPING CAUSED INJURY?.....	12
5.11	IS THE INJURY CAUSED BY DUMPING MATERIAL?	15
6	NON-INJURIOUS PRICE	16
6.1	SUMMARY OF REINVESTIGATION FINDINGS.....	16
6.2	THE ORIGINAL INVESTIGATION	16
6.3	ISSUES IDENTIFIED BY THE TMRO.....	16
6.4	THE REINVESTIGATION	16
7	WILL DUMPING AND MATERIAL INJURY CONTINUE?	18
7.1	SUMMARY OF REINVESTIGATION FINDINGS.....	18
7.2	THE ORIGINAL INVESTIGATION	18
7.3	ISSUES IDENTIFIED BY THE REVIEW OFFICER.....	18
7.4	THE REINVESTIGATION	18

1 SUMMARY AND RECOMMENDATIONS

This report provides the results of the reinvestigation by the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) of certain findings in Trade Measures Report No. 145 (REP 145), which resulted in the imposition of anti-dumping duties on geosynthetic clay liners (GCLs) exported to Australia from Germany.

1.1 Recommendation

In respect of GCLs exported to Australia from Germany, the delegate of the CEO recommends that the Minister for Home Affairs (Minister) affirm his decision to publish dumping duty notices in respect of GCLs exported to Australia from Germany.

1.2 Reasons

Division 9 of Part XVB of the *Customs Act 1901*¹ sets out procedures for review by the Trade Measures Review Officer (TMRO) of certain decisions made by the Minister.

1.2.1 The role of Customs and Border Protection

Where the Minister has accepted a recommendation by the TMRO that a finding or findings should be reinvestigated, the Minister must, in writing, require the CEO of Customs and Border Protection (CEO) to reinvestigate a finding or findings.

The delegate is required to:

- make further investigation of the finding or findings, having regard only to the information and conclusions to which the Review Officer was permitted to have regard;
- within a specified period, to report the result of the further investigation to the Minister affirming the finding or findings;
- setting out any new finding or findings and the evidence or other material on which the new finding or findings are based and the reasons for that decision.

1.2.2 The role of the Minister

Division 9 empowers the Minister, after receiving the delegate's reinvestigation report, to:

- affirm the reviewable decision concerned; or
- revoke that decision and substitute a new decision.

Depending on the Minister's decision², the Minister may³:

- publish a dumping duty notice or countervailing duty notice; or
- vary a dumping duty notice or countervailing duty notice; or
- revoke a dumping duty notice or countervailing duty notice and substitute another dumping or countervailing duty notice.

1.2.3 The reviewable decision

In the original investigation, REP 145, the delegate found that dumping of GCLs exported to Australia from Germany caused material injury to the Australian industry producing like goods. The delegate therefore recommended that the Minister publish a dumping duty notice⁴.

The Minister accepted the recommendations contained in REP 145, including the reasons for the recommendations, the material findings of fact on which the recommendations were based and the evidence relied on to support those findings. To give effect to these recommendations, a dumping

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 Under s.269ZZM(1).

³ Under s.269ZZM(3).

⁴ Under s.269TG(2).

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duty notice was published on 15 October 2009 imposing dumping duties on GCLs exported to Australia from Germany.

The Minister's decision to publish a dumping duty notice is the reviewable decision.

1.2.4 What must be reinvestigated

On 12 May 2010, the Minister directed the CEO to reinvestigate certain findings⁵ made in REP 145 and to report the results of the reinvestigation by 20 August 2010. All findings in the following areas are to be reinvestigated:

- the economic condition of the industry;
- whether dumping caused material injury;
- whether dumping and material injury will continue; and
- non-injurious price.

In the report to the Minister, the Review Officer commented on specific issues in each of these areas. These issues are identified and addressed in the relevant sections of this report.

1.2.5 Reinvestigation findings and conclusions

The delegate has considered all relevant information and conclusions based on relevant information⁶.

The delegate is of the view that the following findings should be affirmed:

- the Australian industry producing like goods suffered injury;
- the injury experienced by the Australian industry was caused by dumped GCLs exported to Australia from Germany;
- injury to the Australian industry caused by dumping of the goods exported from Germany was material;
- dumping and material injury to the Australian industry may continue, and
- the approach to calculation of non-injurious prices.

⁵ Section 269ZX of the *Customs Act 1901* defines findings as “a finding on a material question of fact or on a conclusion based on that fact in relation to reviewable decisions under Subdivision 3 [Review of Ministerial decisions]”.

⁶ Under s.269ZZL(2)(a)(i) the reinvestigation can only have regard to the information and conclusions to which the Review Officer was permitted to have regard. Section 269ZZK(4) states that the Review Officer ‘must only have regard to the relevant information [as defined] and conclusions based on relevant information that are contained in the application for the [Review Officer] review, or in any submissions received from interested parties within 30 days’ of the publication the dumping duty notice. Section 269ZZK(6)(a) defines relevant information as ‘... the information to which the CEO had had regard, or was... required to have regard, when making findings set out in the report... to the Minister in relation to the making of the reviewable decision’. The “conclusions” which the Review Officer could consider were set out in the application for review to the Review Officer and submissions to the review.

2 BACKGROUND**2.1 Original Investigation****2.1.1 The application**

On 5 January 2009, following assessment of an application⁷ made by Geofabrics Australasia Pty Ltd (Geofabrics), an investigation was initiated into the alleged dumping of GCLs exported to Australia from Germany. The commencement of the investigation was notified in *The Australian* newspaper⁸. Australian Customs Dumping Notice (ACDN) 2009/01⁹ was issued on the same day.

2.1.2 The goods under consideration

The goods under consideration (the goods) are GCLs, comprising one or more geotextile layers and one or more layers of bentonite clay.

GCLs are used as hydraulic barriers in civil and hydraulic engineering applications including waste and contaminated soil caps, land fill base liners, gas and vapour seals, surface impoundment liners, secondary containment, dams, canals and water courses, tailings containment, groundwater protection, and basement waterproofing.

The goods are classified to the tariff subheading 6815.99.00 (statistical code 09) of the Customs Tariff Act 1995. The rate of duty on the goods imported from Germany is 5 percent.

2.1.3 Statement of essential facts

On 28 April 2009, Statement of Essential Facts No 145 (SEF 145) was placed on the public record. The report set out the facts on which the delegate proposed to base his recommendations to the Minister.

2.1.4 Preliminary affirmative determination

On 8 May 2009 the delegate made a preliminary affirmative determination that there appeared to be sufficient grounds for the publication of a dumping duty notice in relation to GCLs exported from Germany.

2.1.5 The Minister's decision

On 6 October 2009, the Minister accepted the recommendations contained in Report No 145 (REP 145) including the reasons for the recommendations, the material findings of fact on which the recommendations were based and the evidence relied on to support those findings.

The considerations relevant to the determination of material injury to the Australian industry caused by dumping were 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 price suppression and the consequent impact on the Australian industry including loss of sales volume, loss of profits and reduced profitability.

The Minister published a dumping duty notice¹⁰ imposing dumping duties on the goods exported to Australia from Germany from 15 October 2009. Notice of the Minister's decision was published in *The Australian* and the Commonwealth Government Special Notices Gazette No. S166 on 15 October 2009. ACDN 2009/35 was issued on that day.

⁷ Lodged under s.269TB(1).

⁸ Under s.269TC(4).

⁹ All ACDNs are available on the internet at www.customs.gov.au by following the anti-dumping links.

¹⁰ Under s.269TG(2).

2.2 Review of a Ministerial decision by the Review Officer

The Review Officer may review certain decisions by the Minister, including decisions to publish a dumping duty notice¹¹. These reviews are conducted only as a result of an application from relevant interested parties¹².

In making a recommendation to the Minister, the Review Officer is only to have regard to “relevant information”¹³ and any conclusions in applications and submissions to the Review Officer based on the relevant information. The Review Officer must only have regard to the information available to Customs and Border Protection during the course of the original investigation, information contained in REP 145 and applications and submissions to the Review Officer review¹⁴. The information in the application for review and submissions to the review to which the Review Officer may have regard is also limited to conclusions based on the relevant information.

2.2.1 Applications to the Review Officer

Interested parties had until 14 November 2009 to lodge an application for review of the Ministers decision with the Review Officer. The Review Officer received an application for review from Naue GmbH & Co. Ltd (Naue).

2.2.2 Review Officer review process and decision

The Review Officer published a notice¹⁵ in the *Australian Financial Review* on 7 December 2009, advising that he would conduct a review and inviting interested parties to make submissions to the review by 6 January 2010 (30 days from notification).

The Review Officer received submissions from:

- John O’Connor and Associates, on behalf of Geofabrics; and
- the European Commission Directorate-General for Trade.

The Review Officer recommended that certain findings in REP 145 be reinvestigated. A finding¹⁶ in relation to a reviewable decision means a finding on a material question of fact or on a conclusion based on that fact.

On 12 May 2010, the Minister accepted the Review Officer’s recommendations and directed the CEO to reinvestigate certain findings in REP 145 and to report by 20 August 2010.

Copies of public applications and submissions to the review are available from the Review Officer. The Review Officer’s report is available from the Attorney-General’s Department website, www.ag.gov.au.

On 19 May 2010, a notice¹⁷ was published in Commonwealth Government Gazette No. GN 19 advising the Minister’s acceptance of the Review Officer’s recommendations and the reinvestigation requirements.

2.3 Reinvestigation by Customs and Border Protection

ACDN 2010/18 was published on 26 May 2010. The ACDN advised that:

- the reinvestigation could only have regard to the information and conclusions to which the Review Officer was permitted to have regard;

¹¹ Under s.269TG(2).

¹² As defined in s.269ZX.

¹³ In accordance with s.269ZZK(6).

¹⁴ In accordance with s.269ZZK(4).

¹⁵ Under s.269ZZI.

¹⁶ As defined under s.269ZX.

¹⁷ Under s.269ZZL(2)(b).

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- no new information or conclusions could be considered in a reinvestigation;
- all relevant information was in the public domain and available to interested parties through the public record of the original investigation or the public record of the review maintained by the Review Officer; and
- the report of the reinvestigation had to be provided to the Minister by 20 August 2010.

2.3.1 The reviewable decision

The reviewable decision is the Minister's decision to publish a dumping duty notice¹⁸.

2.3.2 Submissions received in relation to the reinvestigation

Geofabrics made a submission to the reinvestigation. As it was unclear whether information contained in the submission fell outside the scope of information and conclusions to which the Review Officer was permitted to have regard, the delegate did not have regard to the submission in the reinvestigation.

2.4 The reinvestigation report

The following sections of this report set out:

- The reinvestigation methodology;
- further investigation of the information and conclusions to which the Review Officer was permitted to have regard;
- reinvestigation of the findings central to the original recommendation to the Minister;
- conclusions on whether the original findings should be affirmed or new findings made;
- evidence or other material on which the findings of the reinvestigation are based; and
- the reasons for the recommendation to the Minister in relation to the reviewable decision.

¹⁸ Under s.269TG(2).

3 REINVESTIGATION FRAMEWORK

In conducting a reinvestigation, the delegate must have regard only to information and conclusions to which the TMRO was permitted to have regard¹⁹. That is, relevant information and conclusions based on relevant information.

Relevant information is from the original investigation and includes information such as the original application, submissions to the original investigation, visit reports, SEF 145, submissions to SEF 145 and REP 145.

Conclusions based on relevant information are conclusions based on the relevant information contained in applications to the Review Officer and submissions received by the Review Officer within 30 days of notification of the review.

All findings in REP 145 in the following areas are to be reinvestigated:

- the economic condition of the industry;
- whether dumping caused material injury;
- whether dumping and material injury will continue; and
- non-injurious price.

The delegate examined documents from the original investigation (relevant information) and applications and submissions to the Review Officer received within the specified timeframes (conclusions based on relevant information) for the purposes of conducting the reinvestigation.

¹⁹ Section 269ZZL(2)(a)(i).

4 BACKGROUND INFORMATION FROM REP 145

The following information is provided as background to the matters under reinvestigation.

The Applicant

The applicant for anti-dumping duties was Geofabrics on behalf of it and its wholly owned subsidiary Elco Solutions Pty Ltd (Elco Solutions).

The goods under consideration

The goods under consideration (the goods) are GCLs, comprising one or more geotextile layers and one or more layers of bentonite clay.

GCLs are used as hydraulic barriers in civil and hydraulic engineering applications including waste and contaminated soil caps, land fill base liners, gas and vapour seals, surface impoundment liners, secondary containment, dams, canals and water courses, tailings containment, groundwater protection, and basement waterproofing.

The Australian industry

Elco Solutions is the sole Australian manufacturer of GCLs. Geofabrics is responsible for the marketing and distribution of all GCLs manufactured by Elco Solutions to Australian and overseas markets.

The Australian market

The Australian market is supplied by Geofabrics sales of Elco Solutions local production, and imports from China, Germany and other sources. Geofabrics and imports from China are the largest suppliers to the market. Imports from Germany are relatively small and commenced in early 2008.

German exporter and importer

German GCLs are exported by Naue and imported by Global Synthetics Pty Ltd (Global).

Investigation period

The period 1 January 2008 to 31 December 2008 - used to examine exports from Germany to Australia to determine whether dumping had occurred.

Injury analysis period

The period commencing from 1 July 2005 - used to examine details of the Australian market for injury assessment.

Dumping outcome

Export price²⁰ was based on prices paid by Global from Naue. Normal value²¹ was based on Naue selling prices in the German domestic market.

The weighted average dumping margins for GCLs exported by Naue during the investigation period was 26.7 percent.

²⁰ ascertained under s.269TAB(1)(a)

²¹ determined under s.269TAC(1)

5 MATERIAL INJURY TO THE AUSTRALIAN INDUSTRY CAUSED BY DUMPING

5.1 Summary of reinvestigation findings

The delegate affirms the finding of the original investigation that GCLs exported from Germany at dumped prices caused material injury to the Australian industry producing like goods.

5.2 The original investigation

The findings in REP 145 were:

“Customs and Border Protection is satisfied that the Australian GCL industry has experienced the following forms of injury:

- *lost sales volume;*
- *lost market share;*
- *price undercutting;*
- *price depression;*
- *price suppression;*
- *lost profits; and*
- *reduced profitability.”*

5.3 Issues identified by the Review Officer

The Review Officer identified a number of findings that he considered were not supported by sufficient evidence or analysis and therefore warranted reinvestigation. The specific issues raised by the Review Officer included:

Issue 1 - Findings linked to the economic condition of the Australian industry would have been assisted by matching the injury period data with the calendar year investigation;

Issue 2 - Findings linked to the economic condition of the Australian industry have been weakened by a failure to identify why it was appropriate to place ‘considerable weight’ on the analysis of eight selected projects over other projects that could possibly have been included the information provided does not sufficiently identify why the limited selection of projects, some of which the Applicant did not participate in, were significant from the perspective of the GCL market as a whole and suitable for an accurate assessment of injury;

Issue 3 - the analysis of price undercutting on specific projects appeared to yield only one example of price undercutting by the Applicant, and that it seems difficult to rely on aggregate data as a further source of evidence given the very limited sales by the Applicant;

Issue 4 - In regard to the price suppression analysis, I remain uncertain as to whether price increases that would have otherwise occurred were prevented—having regard to the increased margin between the selling price and the cost to make and sell that occurred during the investigation period. I also consider that the Applicant’s observation that price depression was occurring before the appearance of dumped products was not fully analysed;

Issue 5 - I note that the analysis focussed on the impact of the contracts won by the Applicant over the trends and general condition of the Australian industry. I am in considerable doubt as to the appropriateness of such an emphasis when the data indicates that overall sales, market share and profit did not decline in the Australian industry;

Issue 6 - I am of the view that the investigation would have benefited from further analysis of the general condition of the Australian industry. Using the approach adopted in the Report would seem to necessarily lead to a conclusion that any competitor entering the GCL market would cause loss of sales volume, market share and profit, and

Issue 7 - It is not clear to me why a non-confidential version of the measures taken to reduce the cost to make and sell was not made available so as to allow the Applicant the opportunity

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to respond in full. Such information should have also been clearly set out in a confidential attachment to the Report.

5.4 Data periods

The Review Officer stated that findings linked to the economic condition of the Australian industry would have been assisted by matching the injury period data with the calendar year investigation.

The investigation period covered the 2008 calendar year and was used to examine exports to determine whether dumping had occurred. The injury analysis period commenced from 1 July 2005 and was used to examine the Australian market for injury assessment.

The applicant provided cost data for the financial years 2005/06, 2006/07, 2007/08, and the half year to December 2008. The data and supporting records have been reviewed and it is not possible to express costs in smaller time periods (half-yearly or quarterly) or on a calendar year basis.

With regard to prices, the applicant provided aggregate selling price data for the same periods as costs. Detailed data on individual sales was provided for the 18 months to December 2008. This detailed data can be examined over various periods from July 2007 to December 2008.

From the data available, it is not possible to examine injury period data on a calendar year basis, to align with the investigation period. It is also not possible to align the data with the commencement of imports of German product into the Australian market.

However, for the purpose of assessing whether dumping caused material injury to the Australian industry, the alignment of the injury and investigation periods on an annual basis is considered to be of little consequence given that the Australian market is largely driven by tender/contract based sales.

5.5 Approach to assessing material injury

The Review Officer stated that findings linked to the economic condition of the Australian industry had been weakened by a failure to identify why it was appropriate to place 'considerable weight' on the analysis of eight selected projects over other projects that could possibly have been included. The Review Officer also stated that the information provided did not sufficiently identify why the limited selection of projects, some of which the applicant did not participate in, were significant from the perspective of the GCL market as a whole and suitable for an accurate assessment of injury.

In considering what might be an appropriate method to use in assessing an applicant's material injury claims, Customs and Border Protection will generally take into account the nature of the product and any other distinguishing market characteristics. For example, there have been circumstances where total volume and total market average unit prices were an inappropriate basis for assessing volume and price related injury and causation arising from the dumped imports. In previous investigations²², Customs and Border Protection has found that average pricing data was not as compelling when shown to be inconsistent with more specific pricing information.

For the reasons set out above, analysis is not always limit to average pricing data and may, in certain circumstances, be based on more specific evidence. In this reinvestigation, a distinction could be made between total market average unit prices and quoted prices per contract and the available evidence demonstrate that individual contract prices are more relevant and meaningful to analysis.

Given that the Australian domestic market for GCLs is characterised and dominated by tender/contract based sales, in making an assessment of whether the dumping has caused injury to the Australian industry, it was reasonable in the original investigation to focus the injury analysis

²² Grinding Mill Liners from Canada, Report 70; Mobile Garbage Bins from Malaysia, Report 122.

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on the landfill and mining segments. These two market segments accounted for a significant proportion of the total Australian market during the investigation period. The original investigation further focused on the accounts of eight key landfill and mining based contracts that were available for tendering during the investigation period. These eight contracts accounted for over 25 percent of the total Australian market in 2008.

In view of the analysis being limited to the effects of the dumped goods on the price of like goods in eight contracts, to assess the extent to which the dumped goods have caused material injury to the Australian industry, the reinvestigation will also examine whether any injury is material when assessed against the Australian industry's production of like goods as a whole.

5.6 The Australian market

Before addressing the injury findings the reinvestigation considers it necessary to outline the construction and basic operation of the Australian market.

The Australian market for GCLs appears to be around one million m², or one square kilometre. The Australian industry indicated that the size of the market may vary significantly as large projects of 100,000 to 300,000 m² exist and may occur once or twice per year. At one end of the scale there are sales of one roll of 100 m²; at the other, large contracts of up to 300,000 m². The market is also influenced by seasonal factors such as the wet season in northern Australia. Therefore, sales into the market vary considerably in size.

The domestic market is divided into four segments; landfill, mining, building and construction, and consumer. The consumer segment is small in comparison with other segments.

The landfill and mining segments are project driven often with long lead times between the award of a contract and supply of product. The supply of GCLs generally forms part of a contract to supply and install a lining system. In these large volume contracts, sales are made to contractors/subcontractors (specialist lining installers) or direct to asset owners. GCLs are typically delivered directly to site to reduce handling costs.

In REP 145, it was established that the Australian market was supplied by Geofabrics and imports from China and Germany. Data used to construct the market were:

- sales of local production provided by Geofabrics;
- sales of German imports provided by Global; and
- an estimate of sales of Chinese imports by Volclay International Pty Ltd (Volclay) and its distributor Polyfabrics Australia Pty Ltd (Polyfabrics), provided by Geofabrics in the application.

Import data for GCLs are not separately recorded in import statistics. GCLs are classified within a residual tariff subheading that contains a variety of other goods. The statistical code does not require a unit of quantity to be entered. As a result, Customs and Border Protection's import database cannot be relied upon with any accuracy to identify imports of GCLs. The identification of GCLs for the construction of an Australian market can only be based on data provided by interested parties.

The following information was available for construction of the market:

- Geofabrics sales data for the financial years 2005/06, 2006/07, 2007/08 and the 6-months to December 2008;
- Geofabrics detailed sales data for the 18 months to December 2008;
- All Global sales of imports up to December 2008;
- Geofabrics estimate of sales of imports from China and of unknown origin for the financial years 2005/06, 2006/07, 2007/08 and the six months to December 2008;
- Volclay's estimate of its own imports for calendar years 2006, 2007, 2008 and year to date April 2009.

Whilst estimates of Chinese import volumes vary between information provided by Geofabrics and Volclay, the differences are not considered significant. Therefore the original investigation's

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estimate of the total volume in the Australian market is considered to be reasonable and reliable for identifying significant changes in market shares between the parties.

5.7 Comparison of models

The reinvestigation has examined information submitted by interested parties to the original investigation on the various models available in the Australian market and the degree of competition amongst them.

An examination of the various models reveals there is a fair degree of crossover between models within specific projects and between projects. An examination of tender documents submitted by interested parties in the mining and landfill market sectors supports this view. The conclusion drawn is that there are no strict comparisons between Global and Geofabrics products or for that matter imported products from China.

5.8 Competition in the market

The Australian market is supplied by Geofabrics sales of Australian production, Volclay and Polyfabrics sales of Chinese GCLs, Global sales of German product and sales from other sources. Geofabrics and Chinese origin GCLs supply around 90 percent of the market. German GCLs accounted for around 5 percent of sales in 2008.

In the application, Geofabrics indicated that the importers of Chinese GCLs offered a complete range of products in all market sectors. The original investigation REP145 stated that Volclay and Polyfabrics competed with Geofabrics and Global for GCL supply contracts in 2008.

Volclay stated that it imports Colloid Environmental Technologies Company (CETCO) GCLs from China and targets all major market segments. Volclay indicated that its Bentomat ST product was roughly equivalent to industry's ElcoSeal X1000 model.

The importers of Chinese GCLs provided limited cooperation to the original investigation. The information available on sales of Chinese GCLs was limited to tenders in a number of contracts. It is clear that Chinese GCLs compete in all major sectors of the GCL market. There is evidence of Volclay and Polyfabrics offers of prices in the contract market and being successful with at least one major tender.

5.9 Industry cost and price data

Cost and price data provided by the applicant was reviewed in the reinvestigation. In the application, Elco Solutions, the manufacturer, and Geofabrics, the marketer, provided separate cost and price data for financial years 2005/06, 2006/07, 2007/08 and the 6 months to December 2008. The original investigation treated Elco Solutions and Geofabrics as one entity and combined costs to make and sell were produced.

The reinvestigation found a number of minor discrepancies in the industry data provided and where appropriate has amended the information. The items that were amended included:

- selling, general and administration costs for Elco Solutions;
- selling, general and administration costs for Geofabrics, and
- domestic freight costs in 2006/07 for Geofabrics.

The overall impacts of the changes to the data following reinvestigation are not considered material.

The reinvestigation was able to confirm that specific details surrounding the Australian industry's efforts to reduce the cost to make and sell of like goods were confidential.

5.10 Has dumping caused injury?

Given that the injury was claimed to have occurred in a number of key tenders that took place in 2008, the aggregated data does not permit a detailed examination of the effect on industry performance of the introduction of German GCLs into the Australian market. Therefore the

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reinvestigation finds that it was appropriate for the original investigation to focus its material injury assessment on specific contracts tendered during the investigation period.

The reinvestigation has examined evidence gathered in the original investigation relating to the contract market to assess whether the original findings on material injury were reasonable. Injury claims are centred on the bidding and award of contracts for GCLs in 2008. Extensive information was collected in the original investigation to understand the bidding process and roles of interested parties in the award of contracts. The individual contracts examined in the reinvestigation are summarised in the following table.

Project	Quoted/ Awarded	Market segment	Winning supplier
A	Quoted & awarded 2008	Landfill	Global
B	Quoted & awarded 2008	Mining	Global
C	Quoted & awarded 2008	Building & construction	Geofabrics
D	Quoted & awarded 2008	Landfill	Geofabrics
E	Quoted & awarded 2008	Landfill	Geofabrics
F	Quoted & awarded 2008	Landfill	Geofabrics
G	Quoted & awarded 2008	Landfill	Geofabrics
H	Quoted & awarded 2008	Building & construction	Chinese imports
I	Quoted in 2008 & Awarded 2009	Landfill	Geofabrics
J	Quoted in 2008 & Awarded 2009	Landfill	Global
K	Quoted 2009	Landfill	Geofabrics
L	Quoted 2008	Landfill	Outcome unknown
M	Quoted 2008	Landfill	Project on hold – no decision

The size of the Australian market is around one million m² per annum. The contracts above while not all awarded in 2008 represent a significant proportion of the Australian market. The reinvestigation has examined information gathered in relation to each of the projects above to understand whether the dumped goods have led to the Australian industry suffering injury.

All references in the following analysis to prices quoted by Global are taken to be imported GCLs from Germany purchased at dumped prices.

Project A

Evidence confirms that imported GCLs from Germany were priced aggressively with the aim of establishing a presence in the Australian market and making its brand known for future contracts. Price was a key consideration in the awarding of this contract and based on price quotes for comparable models, the German GCL's undercut the industry equivalent product.

Had the importer purchased the goods at undumped prices, it would have incurred a loss based on the successful tender price which further confirms the pricing strategy adopted by Global in entering the Australian market.

There is insufficient evidence to establish whether Chinese imported GCL's were actively pursuing this particular tender.

Imports of GCLs at dumped prices enabled the importer to successfully tender for this contract by undercutting the applicant's price for an equivalent model. Therefore, dumping is found to have caused the Australian industry to suffer injury by way of lost potential sales and profits.

Project B

Information confirms that price was a key factor in the awarding of this contract. Quoted prices from both Global and Geofabrics reveal that the imported goods significantly undercut the industry's price for a compliant model. Evidence also indicates that the initial quote by Geofabrics was used to extract a competitive price from Global.

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Imports of GCLs at dumped prices enabled the importer to successfully tender for this contract by undercutting the applicant's price for an equivalent model. Therefore, dumping is found to have caused the Australian industry to suffer injury by way of a lost potential sale and profits.

Project C

Information gathered from relevant parties shows that both Global and Geofabrics provided quotes for two models meeting the necessary specifications. Whilst Geofabrics was eventually successful in winning the contract, there is sufficient information that indicates that it lowered its original price in response to a competitive quote from Global. The price reduction in Geofabrics' quote ranged from 8% for one model to 18% for another.

Therefore, dumping is found to have caused the Australian industry to suffer injury by way of price depression and lost profits.

Projects D, E and F

In each of these three contracts, Geofabrics was the only party to tender. There is no evidence of quotes tendered by Global for GCLs imported from Germany.

There is also evidence that suggests that the entry of German GCLs into the Australian market and the subsequent depression of prices in some of the earlier projects may have had a flow on effect on GCL prices in ensuing projects. However, there is also evidence which indicates that the level of transparency in the market was variable.

It is unclear to the reinvestigation whether the Australian industry's successful prices in these three projects are depressed and/or suppressed and whether any such injury could be attributed to dumping.

Project G

Whilst information confirms that Geofabrics was competing against German and Chinese imported GCLs for this project, Geofabrics stated that it understood that it was only competing directly with Chinese GCLs.

Quotes tendered by Geofabrics undercut prices tendered by Global. There is no reliable information detailing prices quoted for the Chinese imported GCLs.

Factors that were identified as being critical in the selection of the GCL supplier were specifications, price, availability and service.

There is no information to link the dumping of GCLs from Germany with any price related injury to the Australian industry on this contract.

Project H

Information confirms that locally produced GCLs were competing with imported GCLs from Germany and China for this project. Prices tendered by Global were higher than prices offered by Geofabrics and the Chinese imports. Chinese imported GCLs won the contract after offering the lowest price for a compliant product.

The Australian industry has suffered injury in the form of a lost potential sale and lost potential profits; however this injury can be attributed to other factors, being imports from China.

Project I

The purchaser of the GCLs for this project indicated that price, specifications and availability of supply to be the key factors in the awarding of this contract. Both Geofabrics and Global competed for the project.

Information indicates that the industry tendered an initial price that was later revised down following advice that a lower grade of German sourced GCLs was being considered. Geofabrics was eventually successful in winning the tender but suffered injury in the form of price depression and a loss of potential profits as a result of competitive pricing by Global.

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Project J

Price, availability and bundling were considered the critical factors in the awarding of this contract. Global was the preferred supplier even after its quoted prices for German GCLs were well above prices tendered by Geofabrics. Information indicates that Global's relationship with the purchaser and the requests for immediate supply of product were important considerations.

Whilst the Australian industry appears to have suffered injury in the form of a lost potential sale and lost potential profits, the injury cannot be attributed to dumped imports from Germany.

Project K

Price, specifications, quality and availability were confirmed as critical factors in selecting the GCL supplier for this project.

Geofabrics quoted prices for two different grades of GCLs, whilst Global tendered a price for a grade of GCL which did not directly compare with either of the two grades tendered by Geofabrics. Given the lack of cooperation by importers of Chinese GCLs, there is little information on the specific grades and prices tendered in this project.

Geofabrics was successful in this project with the higher specified grade of GCL and information shows that the final accepted price was eight percent lower than their initial quote. The tendered price is also lower than the price quoted by Global for a lower specified grade of GCL.

Therefore, dumping is found to have caused the Australian industry to suffer injury by way of price depression and lost potential profits.

In summary the reinvestigation found that the Australian industry suffered injury by way of:

- lost potential sales and profit in Projects A and B, and
- price depression and lost profits in Projects C, I and K.

5.11 Is the injury caused by dumping material?

As outlined earlier in this report, the materiality of any injury caused by the dumping must be assessed against the Australian industry's production of like goods as a whole.

It has been established that the German supplier has exported GCLs to Australia at dumped prices during the investigation period. Dumping margins calculated were 26.7 percent.

All imports of GCLs imported during the investigation period were dumped. The volume of dumped imports during the investigation period was found not to be negligible. The Australian industry was unsuccessful in three projects during the investigation period which were awarded to the importer of German GCLs. The impact of this was a loss of approximately 60,000 m² which is significant in terms of the industry's overall production and sales volumes and the total market over that period. It was also found that in these projects lost to German imports, the price of the German GCLs undercut the lowest price offered by the Australian industry.

In three projects where the Australian industry was successful, it reduced its tendered prices in response to quotes tendered by Global. This resulted in the industry suffering injury in the form of price depression/suppression and a loss of potential profits. These three projects were significant in terms of the industry's production and the total market representing approximately 87,000 m² during the investigation period.

Therefore, the reinvestigation considers that based on the information gathered in the original investigation, it was reasonable to be satisfied that dumped imports of GCL from Germany caused material injury to the Australian industry producing like goods. The reinvestigation affirms the finding of the original investigation that GCLs exported from Germany at dumped prices caused material injury to the Australian industry producing like goods.

6 NON-INJURIOUS PRICE

6.1 Summary of reinvestigation findings

The reinvestigation affirms the methodology and calculation of the non-injurious prices in the original investigation.

6.2 The original investigation

REP 145 outlined the following approach to estimating unsuppressed selling prices and the calculation of NIPs:

“Customs and Border Protection considers the most appropriate basis for an unsuppressed selling price is Geofabrics’ weighted average selling price for the second half of 2007. Customs and Border Protection considers that to calculate the non-injurious price at the FOB price level, it should deduct from the unsuppressed selling price amounts for:

- *importer profit;*
- *importer administrative, selling and general expenses;*
- *importer into-store costs; and*
- *overseas freight and marine insurance.”*

6.3 Issues identified by the TMRO

The Review Officer made the following observation:

“It is not sufficiently clear to me why a domestic industry GCL grade found to be in competition with a product of the Applicant, and included as such in injury analyses throughout the investigation, was not similarly included in the calculation of the non-injurious price. I have recommended a reinvestigation of the calculation of the non-injurious price on this basis and consider that it would be helpful if how unsuppressed selling prices were used in the calculation of the non injurious price could be explained in greater detail”.

6.4 The reinvestigation

6.4.1 Methodology used in the original investigation

The unsuppressed selling prices for the three imported models of GCL’s, NSP 4300, NSP 4900 and BFG 5000 were calculated using weighted average prices for Australian industry sales over the period July to December 2007. Weighted average selling prices included all industry sales across all market segments.

The models used in the calculation of unsuppressed selling prices are shown in the table below.

Imported Bentofix model	Australian ElcoSeal model
NSP 4300	X1000
NSP 4900	X1000 and X2000
BFG 5000	X1000 and X2000

Amounts for importer profit, SG&A, into-store costs, and overseas freight and marine insurance were deducted from the unsuppressed selling prices to arrive at non-injurious prices for each model.

The non-injurious prices for each model were used to calculate an overall “product injury margin” for German GCLs imported and sold into the Australian market over the investigation period. The injury margin was calculated by weighting the difference between export prices and non-injurious prices for each model by their respective sales volumes. The sum total was expressed as a percentage of the total export price which resulted in an injury margin of 5.6 percent.

This injury margin was then applied to the ascertained export prices to arrive at amounts for interim dumping duty for GCLs less than or equal to 5,000g/m² and for GCLs exceeding 5,000g/m².

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6.4.2 Reinvestigation

The reinvestigation has examined the original investigations calculation of non-injurious prices. As stated in section 5.7 of this report, the reinvestigation found that there was a fair degree of crossover between models within specific projects and between projects and that ultimately there are no strict comparisons between the Australian industry products and the imported goods from Germany. Therefore, the reinvestigation finds that the models used in the original investigation to estimate unsuppressed selling prices were reasonable.

The reinvestigation examined information used to calculate the necessary deductions such as importer profit, SG&A, into-store costs, overseas freight and marine insurance. The deductions were found to be reasonable and appropriate.

The reinvestigation notes that the “injury margin” methodology and purpose was not explained in the REP 145. The injury margin was used for the calculation of interim dumping duty. The margin was applied to the export price to generate an amount of interim dumping duty. This amount of interim dumping duty was added to the export price to generate non-injurious prices for GCLs up to 5,000g/m² and over 5,000g/m².

7 WILL DUMPING AND MATERIAL INJURY CONTINUE?

7.1 Summary of reinvestigation findings

The reinvestigation affirms the finding in the original investigation that in the absence of anti-dumping measures, dumping will continue to cause material injury to the Australian industry.

7.2 The original investigation

The original investigation found that:

“...a continuation of price competition from German GCLs at dumped prices 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 significant price depression and suppression, and the consequent negative impact on profits and profitability.

Customs and Border Protection considers that exports of GCLs from Germany in the future, in the absence of anti-dumping measures, are likely to be at dumped prices. Customs and Border Protection also considers that continued dumping is likely to cause further material injury to the Australian GCL industry.”

7.3 Issues identified by the Review Officer

The Review Officer stated that:

“The concerns I have identified in regard to the way in which the investigation has analysed injury and causation also apply to findings related to whether dumping and material injury will continue. In particular, this extends to concerns identified in the analysis of price, volume and profit effects and in the consideration of the impact of imports from China, the circumstances of each tender and price responses by Geofabrics.”

7.4 The reinvestigation

The reinvestigation has found that imported German GCLs at dumped prices caused material injury to the Australian industry producing GCLs. The importer of German GCLs remains active in the Australian market, has won a further contract and continued to quote for future contract sales in 2009. The company has forward orders placed to fulfil contract obligations.

Given that price was considered a critical factor in all of the key projects examined, it is reasonable to expect that the continued importation of German GCLs at dumped prices will allow Global to tender prices that will either continue to undercut industry's prices or that are more competitive than they otherwise would have been. It is also reasonable to expect that the continued undercutting by the German GCLs would likely lead to continued injury in the form of either lost potential sales and lost potential profits in contracts where the industry is unsuccessful. Where the industry successfully tenders for a project in competition with Global, it is likely that injury will be experienced in the form of price depression and/or suppression and lost profits.

The reinvestigation affirms the finding in the original investigation that:

- exports of GCLs from Germany in the future, in the absence of anti-dumping measures, are likely to be at dumped prices; and
- that continued dumping is likely to cause further material injury to the Australian GCL industry.