



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

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**CUSTOMS ACT 1901 - PART XVB**

**TRADE MEASURES BRANCH**

**REPORT NO. 145**

**GEOSYNTHETIC CLAY LINERS  
EXPORTED FROM  
GERMANY**

**9 June 2009**



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

**Customs Act 1901 - Part XV B**

**Geosynthetic clay liners**

**Federal Republic of Germany**

**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 geosynthetic clay liners comprising one or more geotextile layers and one or more layers of bentonite clay, classified to tariff subheading 6815.99.00, statistical code 09, in Schedule 3 of the *Customs Tariff Act 1995* exported to Australia from Germany (the goods).

In Trade Measures Report No. 145 Customs and Border Protection recommended the publication of a dumping duty notice in respect of the goods. The report outlines the investigations carried out by Customs and Border Protection, a statement of the reasons for the recommendations contained in the report, 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 margins established for each of the exporters and an explanation of the methods used to compare export prices and normal values to establish those dumping margins are set out in the following table:

Exporter	Dumping Margin	Method to establish dumping margin
Naue GmbH & Co. KG	26.7%	Weighted average export prices for each grade exported to Australia 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 GCLs 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.

Trade Measures Report No. 145 should be read in conjunction with this notice and is available on request from the Trade Measures Office, Australian Customs and Border Protection Service, Canberra, telephone (02) 6275 6547 or on the Internet at [www.customs.gov.au](http://www.customs.gov.au).

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. 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 8 May 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 Germany.

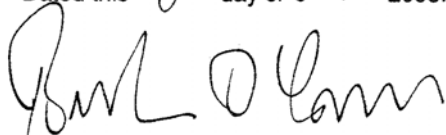
The considerations relevant to my determination of material injury to the Australian industry caused by dumping are the size of the dumping margins, the effect of dumped imports on prices in the Australian market in the form of price undercutting, price depression and price suppression and the consequent impact on the Australian industry including 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 6701, fax number (02) 6275 6990 or email [tmops3@customs.gov.au](mailto:tmops3@customs.gov.au).

Dated this 6<sup>th</sup> day of July 2009.



BRENDAN O'CONNOR  
Minister for Home Affairs

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# 1 ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
Beaudesert	Beaudesert Central Landfill project
Boddington	Boddington Gold Mine project
BP Carrington	BP Terminal Tank Farm Carrington project
Browns Plains	Browns Plains SMART Tip project
Cardup	South Cardup Cell 7 project
CEO	Chief Executive Officer of Customs and Border Protection
CETCO	Colloid Environmental Technologies Company
China	The People's Republic of China
Cobram	Cobram Cell 8 Landfill project
CTMS	cost to make & sell
Customs & Border Protection	Australian Customs & Border Protection Service
Elco Solutions	Elco Solutions Pty Ltd
FOB	free-on-board
GCLs	geosynthetic clay liners
Germany	Federal Republic of Germany
Geofabrics	Geofabrics Australasia Pty Ltd
Global	Global Synthetics Pty Ltd
Highbury	Highbury Landfill project
Millar Road	Millar Road landfill project
Minister	Minister for Home Affairs
Naue	Naue GmbH & Co. KG
NIP	non-injurious price
Polyfabrics	Polyfabrics Australia Pty Ltd
Red Hill	Red Hill Waste Management facility project
SEF	statement of essential facts
sqm	square metres
the Act	The Customs Act 1901
the goods	the goods the subject of the application
USP	unsuppressed selling price
Volclay	Volclay International Pty Ltd
WERM	Wingfield Eco-Resource Management Centre landfill project
Woodford Island	Woodford Island/Clarenza STP project
WTO	World Trade Organization

## 2 SUMMARY

This report presents the results of the Australian Customs and Border Protection Service's (Customs and Border Protection) investigation into the alleged dumping of geosynthetic clay liners (GCLs) exported to Australia from the Federal Republic of Germany (Germany). The investigation was initiated on 5 January 2009.

On 12 November 2008 Geofabrics Australasia Pty Ltd (Geofabrics) lodged an application requesting that the Minister for Home Affairs (Minister) publish a dumping duty notice in respect of GCLs exported to Australia from Germany.

The application was lodged by Geofabrics on behalf of itself and its wholly owned subsidiary Elco Solutions Pty Ltd (Elco Solutions), the sole manufacturer of GCLs in Australia.

The application alleged that GCLs have been exported to Australia at prices lower than the normal values, and that this dumping has caused material injury to the Australian industry through lost sales volume, lost market share, price undercutting, price depression, price suppression, reduced profits and profitability, and other economic factors.

Following an examination of the application, Customs and Border Protection considered that there appeared to be reasonable grounds for the publication of a dumping duty notice and initiated an investigation. Public notification of the investigation was made on 5 January 2009. At that time interested parties were advised they could make submissions to Customs and Border Protection no later than 16 February 2009, that the Statement of Essential Facts (SEF) would be placed on the public record by 25 April 2009, and that Customs and Border Protection must report to the Minister on or before 9 June 2009.

Trade Measures SEF No. 145 in relation to this investigation was placed on the public record on 25 April 2009. Interested parties were advised that responses to the SEF should be made by 18 May 2009.

Submissions received in response to the SEF were taken into account in deciding on the recommendations made to the Minister in this final report.

As a result of its completed investigation, Customs and Border Protection was satisfied of the following:

- there is an Australian industry producing like goods to the goods under consideration;
- GCLs exported from Germany to Australia were dumped with a weighted average dumping margin of 26.7 percent;
- the dumped exports from Germany caused material injury to the Australian industry in the form of lost sales volume, lost market share, price undercutting, price depression, price suppression, lost profits, and reduced profitability; and

- GCLs exported from Germany to Australia in the future may be at dumped prices and the continued dumping may cause material injury to the Australian industry.

On 8 May 2009, Customs and Border Protection made a preliminary affirmative determination (PAD) that there appeared to be sufficient grounds for the publication of a dumping duty notice. Provisional measures in the form of securities have applied to imports of GCLs exported to Australia from Germany that were entered for home consumption on or after 8 May 2009.

Customs and Border Protection recommends that the Minister implement anti-dumping measures, in the form of a dumping duty notice, in respect of GCLs exported from Germany to Australia.

Customs and Border Protection recommends that the Minister, by public notice, declare that section 8 of the *Customs Tariff (Anti Dumping) Act 1975* (the Dumping Duty Act) applies:

- to the goods exported by all exporters from Germany after the Chief Executive Officer of Customs and Border Protection (CEO) made a PAD (8 May 2009), but before the publication of the notice in terms of subsection 269TG(1); and
- to like goods that are exported to Australia after the date of publication of the notice in terms of subsection 269TG(2).

## **3 INTRODUCTION**

### **3.1 Purpose of the investigation**

Part XVB of the *Customs Act 1901*<sup>1</sup>, and the *Customs Tariff Anti-Dumping Act 1975*, contain Australia's anti-dumping and countervailing legislation. Remedies are available where dumping (or subsidy) causes or threatens to cause material injury to an Australian industry.

Australian Customs and Border Protection Service (Customs and Border Protection) is required to conduct an investigation and report to the Minister for Home Affairs (Minister) by day 155 (or such later date as the Minister allows under section 269ZHI) after initiating an investigation. On the basis of this report, the Minister will make a decision on whether anti-dumping measures should be imposed.

Customs and Border Protection must clearly state the material findings of fact on which any recommendation in this report is based and provide particulars of the evidence relied on to support those findings.

Interested parties have 30 days after the publication of the Minister's decision in which to apply to the Trade Measures Review Officer to review the decision.

### **3.2 Background to this investigation**

On 12 November 2008, Geofabrics Australasia Pty Ltd (Geofabrics) lodged an application under subsection 269TB requesting that the Minister publish a dumping duty notice in respect of geosynthetic clay liners (GCLs) exported to Australia from Germany.

Further information in support of the application was received on 2 and 11 December 2008.

The application was made by Geofabrics on behalf of itself and its wholly-owned subsidiary Elco Solutions Pty Ltd (Elco Solutions), the sole manufacturer of GCLs in Australia. They are referred to together in this report as the applicants.

The application alleged that GCLs exported from Germany have been exported to Australia at prices less than their normal value and that this dumping has caused material injury to the Australian industry through lost sales volume, lost market share, price undercutting, price depression, price suppression, reduced profits and profitability, and other economic factors. The applicants claimed that this material injury commenced in March 2008.

The application identified Naue GmbH & Co. KG (Naue) as the sole German exporter of GCLs to Australia, and Global Synthetics Pty Ltd (Global) as the only Australian importer of German GCLs.

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<sup>1</sup> All references in this Report to sections of legislation, unless otherwise specified, are to the Customs Act 1901.

### **3.3 Public notification**

Public notification of initiation of the investigation was made in *The Australian* newspaper on 5 January 2009 and ACDN 2009/01. At that time interested parties were advised they could make submissions to Customs and Border Protection no later than 16 February 2009, that the Statement of Essential Facts (SEF) would be placed on the public record by 25 April 2009, and that Customs and Border Protection must report to the Minister on or before 9 June 2009.

Trade Measures SEF No. 145 in relation to the investigation was placed on the public record on 25 April 2009. Interested parties were advised that responses to the SEF should be made by 18 May 2009.

On 8 May 2009, Customs and Border Protection made a preliminary affirmative determination (PAD) that there appears to be sufficient grounds for the publication of a dumping duty notice. Public notification of the PAD was made in *The Australian* newspaper on 8 May 2009 and in ACDN 2009/10.

All Australian Customs Dumping Notices and the SEF and PAD reports are available on the Internet at [www.customs.gov.au](http://www.customs.gov.au).

#### **3.3.1 Investigation and injury analysis periods**

Customs and Border Protection notified that it would examine data in relation to exports of GCLs from Germany to Australia during the period 1 January 2008 to 31 December 2008 (investigation period) to determine whether dumping had occurred. Customs and Border Protection also notified that it would examine details of the Australian market from 1 July 2005 for injury assessment (injury analysis period).

## 4 GOODS

### 4.1 Goods under consideration

The goods under consideration are geosynthetic clay liners, commonly referred to as GCLs.

The applicants described the goods as GCLs comprising one or more geotextile layers and one or more layers of bentonite clay. The applicants provided the following additional details in respect of the goods:

*Geosynthetic Clay Liners (“GCLs”) usually include two geotextile layers to encapsulate a layer of bentonite clay. The geotextile outer layers are generally made of polypropylene or polyester with a uniform core of premium quality bentonite clay to form a hydraulic barrier, or “sandwich” of textile and clay.*

*The components and performance criteria of a GCL typically fall within the following specification ranges:*

Component	Per square metre
Bentonite clay	2500g/m <sup>2</sup> to 5500 g/m <sup>2</sup>
Cover textile	100 g/m <sup>2</sup> to 450 g/m <sup>2</sup>
Carrier textile	80 g/m <sup>2</sup> to 550 g/m <sup>2</sup>
<b>Performance Criteria</b>	
Permeability	No greater than 7 x 10 <sup>-10</sup> m/s
Peel strength	Between 150N/m and 3500N/m

*The “sandwich” may consist of more than one layer of the textile components, depending upon the application for which it is intended. The clay, cover textile and carrier textile are usually needle-punched together to form a geocomposite. The fibres from the cover textile are punched through the clay and carrier textile to confine and retain the clay in place whilst providing internal shear strength to the product. The goods may be heat treated to lock the fibres in place and the cover textile may be impregnated with 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.

#### 4.1.1 The imported goods

During the investigation period the goods under consideration were manufactured in, and exported from Germany, by Naue and sold under the product name Bentofix®. Naue exported the following three grades of Bentofix® from Germany to Australia during this period:

- NSP 4300;
- NSP 4900; and
- BFG 5000.

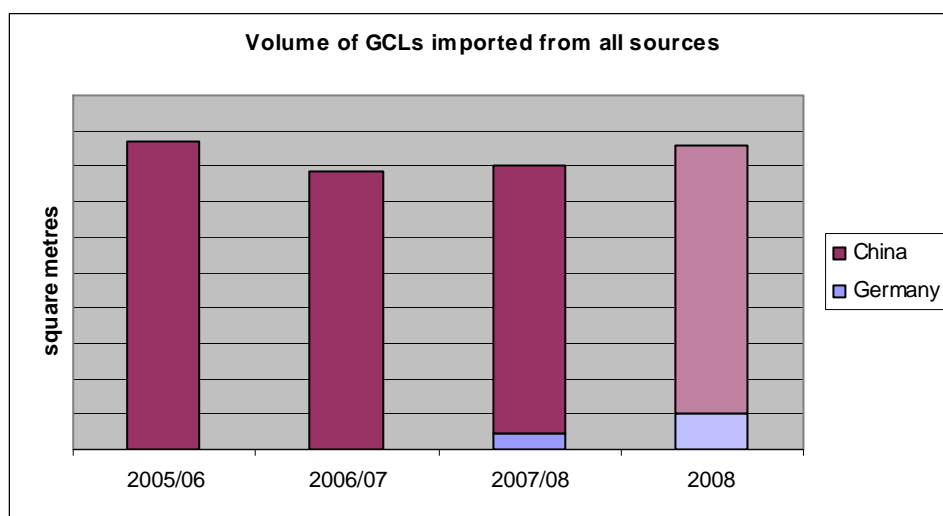
The goods are classified to subheading 6815.99.00 (statistical code 09) in Schedule 3 to the *Customs Tariff Act 1995*. The rate of duty on goods imported from Germany under this subheading is 5 percent.

## 4.2 Imports

### 4.2.1 Imports from all sources

From its own commercial import records, Customs and Border Protection identified importers of GCLs from the People's Republic of China (China) and Germany during the injury analysis period. China accounts for the largest proportion of imports. Customs and Border Protection visited the only importer of the goods from Germany during the investigation period to confirm the origin and volume and to obtain information about the export price of the goods.

The volume of GCLs imported into Australia over the financial years 2005/06 to 2007/08 is shown in the chart below (Confidential Attachment 1 refers). The volume of GCLs imported in the 2008 calendar year is also shown to coincide with the investigation period. (Data is shown in financial year format to match Australian industry sales data provided in the application.)



Under subsection 269TEA(2), this report must, to the extent that it is practicable to do so, also extend to any like goods not covered by the application but imported into Australia during the period starting on the date of initiation of the investigation and ending 20 days after the SEF is placed on the public record. Accordingly, from its commercial records, Customs and Border Protection identified that an import of GCLs from Germany had been made by the same importer after the end of the investigation period. This importation is discussed in detail in the later relevant sections of this report.

## **5 AUSTRALIAN INDUSTRY**

### **5.1 Introduction**

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

### **5.2 The GCL production process**

Elco Solutions manufactures GCLs from the following raw materials:

- cover geotextile layer – non-woven polypropylene textile pre-product – manufactured by Elco Solutions at its manufacturing facility (on a separate production line to GCLs) from polyester or polypropylene fibre;
- carrier geotextile layer – a woven polypropylene textile scrim; and
- bentonite clay – powdered sodium bentonite clay.

#### **5.2.1 Manufacture of the non-woven pre-product**

The imported polyester and polypropylene fibre is delivered to the Elco Solutions facility in bales. The bales are opened, blended and weighed before being blown into a carding unit where the fibres are combed and teased into a thick web. This ensures that the correct blend and weight of fibre is used and that the fibres are correctly aligned.

After carding, the web is folded by a machine back upon itself several times until the required uniformity, thickness and width is reached. The web is then conveyed into a machine which needle punches the fibres downwards, intermingling and knotting the fibres together to form a textile. The textile is then conveyed further and is needle punched a second time; this time in an upwards direction.

In some cases prior to the second needle punching process, a layer of woven textile scrim is introduced to the bottom of the non-woven pre-product and these are then needle punched together. This results in a combination woven/non-woven carrier layer which forms the textile for the higher grades of GCLs.

The textile is then passed through a needle detecting device which alerts staff to any needles that may have broken off and become lodged in the product during needle punching. Any detected needles are manually removed and the finished textile is wound around a cylindrical core tube before being moved to the GCL production line.

#### **5.2.2 Manufacture of GCLs**

At the beginning of the GCL production process, the 'carrier textile' is loaded onto a roller at the front of the GCL machine. This forms the base of the GCL.

The carrier layer is then slowly unwound by the GCL machine and conveyed as a flat sheet under a dispensing unit, where sodium bentonite clay powder is distributed in

an even layer over the carrier textile. The edges of the carrier textile are then folded over to seal the sides, preventing the bentonite from leaking.

A layer of the non-woven pre-product (which has been loaded onto a roller in the centre of the GCL machine) is rolled on top of the clay as it passes along the production line. The 'sandwich' of carrier textile, clay and non-woven pre-product is then conveyed under another distribution unit, which delivers another layer of bentonite clay to both edges of the pre-product (approximately 500mm wide) to act as a sealant between the rolls of GCLs laid side-by-side (the GCLs are overlapped at the edges during installation).

The 'sandwich' of carrier textile, clay and non-woven pre-product is then passed through a heavy needle-puncher. This forces fibres of the non-woven cover textile through the clay and into the carrier textile, bonding the layers of the product together.

The product then passes over a heat source, which melts the fibres punched through the carrier layer, and locks them into place.

The finished GCL is then passed through a needle-detector and rolled around a cylindrical core tube. The roll of GCL is then removed from the GCL machine, and packaged for distribution and sale.

Elco Solutions manufactures GCLs under the product name Elcoseal® in four standard grades for the Australian market, namely X800, X1000, X2000, and X3000. Each grade has different specifications and properties such as permeability, peel strength and shear strength.

Elco Solutions manufactures equivalent grades for the export market under the Enviromat® product name. Elco Solutions also manufactures another grade marketed under the BluSeala® product name which is specifically designed for the building and construction segment of the Australian market.

### **5.3 Australian industry**

Customs and Border Protection visited Elco Solutions and Geofabrics to verify information submitted in the application.

Customs and Border Protection has used the verified sales and cost data presented by Elco Solutions and Geofabrics as representing the revenue and costs associated with the production and sale of GCLs by the Australian industry.

Customs and Border Protection established during the verification visit to Elco Solutions' Southport plant in Queensland that it manufactures GCLs.

### **Conclusion**

Having regard to all relevant information, in accordance with subsections 269T(2) and 269T(3), Customs and Border Protection considers that GCLs are manufactured in Australia by Elco Solutions.

## 5.4 Like goods

Subsection 269T(1) defines 'like goods' as:

*“Like goods, in relation to goods under consideration, means 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”.*

### 5.4.1 Applicants' claims

The application included a detailed comparison of grades of ElcoSeal® and Bentofix®. The application also included a table that matched the major grades of ElcoSeal® with the equivalent grades of Bentofix® exported to Australia in 2008. The table is reproduced below.

Australian manufactured GCLs ElcoSeal®	The Goods Bentofix®
X800	NSP 4000; NSP 4300
X1000	NSP 4300; NSP 4900
X2000	NSP 4900; BFG 5000
X3000	BFG 5000

Customs and Border Protection noted when examining tender documents relating to contracts for supply awarded in 2008 that NSP 4300 competed with X1000; NSP 4900 competed with X800, X1000 and X2000; and BFG 5000 competed with X1000 and X2000.

The applicants claimed that the locally made goods are like goods to the goods under consideration because they:

- are classified to the same tariff sub-heading;
- are manufactured according to similar manufacturing processes, on similar machinery, using similar raw materials;
- are sold into the same markets;
- compete directly with the imported goods; and
- may be substituted for the imported goods across most (if not all) applications.

### 5.4.2 Customs and Border Protection's assessment in SEF

Customs and Border Protection determined that the GCLs manufactured by Elco Solutions are not identical to the goods as they vary in specification and grade. However, Customs and Border Protection considers the GCLs manufactured by Elco Solutions are like goods to the GCLs from Germany for the following reasons:

- physical likeness – they possess the same physical characteristics i.e. size, dimensions, weight, shape, appearance;

- production likeness – they are manufactured according to similar manufacturing processes (until February 2008, the like products were manufactured in Australia under a licence granted by Naue. Up until this time Naue held the patent for the production process);
- commercial likeness – they are sold into the same market segments and compete directly for GCL supply contracts; and
- functional likeness - despite some specification differences across the comparable ElcoSeal® and Bentofix® grades, they can be readily substituted across most (if not all) applications.

### **5.4.3 Responses to the SEF**

#### **Geofabrics**

Geofabrics submitted that it agreed with Customs and Border Protection's assessment that Elco Solutions manufactures like goods to imported GCLs.

### **5.5 Conclusion**

Having regard to all relevant information Customs and Border Protection considers that:

- GCLs are manufactured in Australia by Elco Solutions as they are partly manufactured in Australia in accordance with subsections 269T(2) and (3);
- There is an Australian industry in respect of like goods and the industry consists of Elco Solutions in accordance with subsection 269T(4); and
- GCLs manufactured by Elco Solutions are like goods to GCLs exported from Germany to Australia in accordance with subsection 269T(1).

## **6 AUSTRALIAN MARKET**

### **6.1 Introduction**

Customs and Border Protection established that the Australian market for GCLs in the injury analysis period is supplied by Geofabrics and imports from China and Germany.

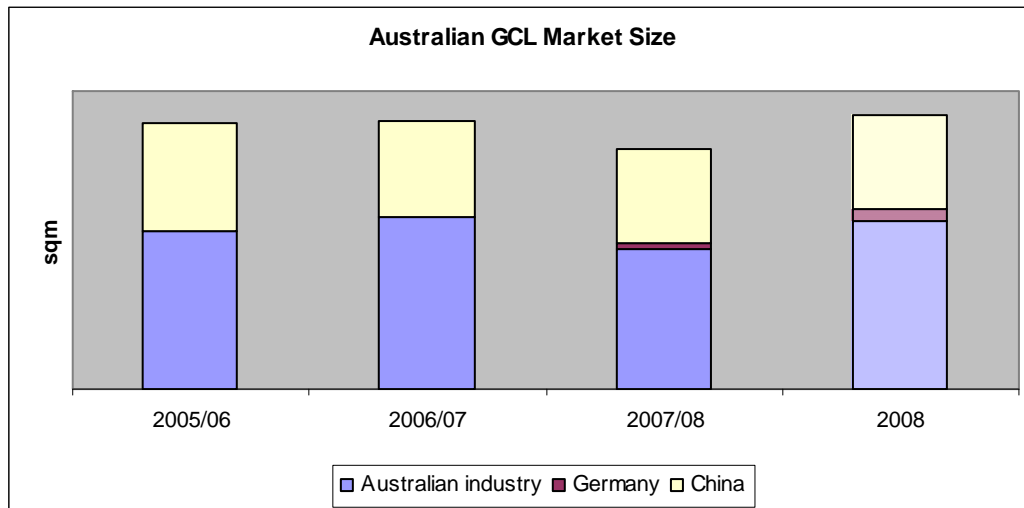
Customs and Border Protection understands that the major manufacturer of GCLs in China is Colloid Environmental Technologies Company (CETCO). CETCO is one of the world's leading manufacturers of GCLs and operates a number of plants located around the world including one in China. GCLs manufactured by CETCO in China are imported into Australia by a related company, Volclay International Pty Ltd (Volclay), and sold to the Australian market by Volclay and Polyfabrics Australia Pty Ltd (Polyfabrics), an exclusive distributor for Volclay. Customs and Border Protection is aware that Volclay and Polyfabrics competed with Geofabrics and Global for GCL supply contracts in relation to projects tendered in 2008.

### **6.2 Market size**

During the investigation, Customs and Border Protection verified sales data submitted by Geofabrics. Customs and Border Protection also collected and verified import and sales data from Global, the only importer of German GCLs during the investigation period.

Customs and Border Protection sought the cooperation of Volclay and Polyfabrics in establishing the volume of Chinese GCL imports and sales on the Australian market. As limited cooperation was received from Volclay and Polyfabrics, Customs and Border Protection used data supplied in the application and from Customs and Border Protection's commercial records to estimate the import and sales volume of GCLs from China during the injury analysis period.

The following chart contains Customs and Border Protection's best available information concerning the size of the Australian market for GCLs over the injury analysis period and 2008 (Confidential Attachment 1 refers).



**NOTE:** in the above and following charts where data is shown for 2008, the 2008 data inevitably overlaps with data for 2007/08. Customs and Border Protection considered it necessary to present 2008 data separately to align with the investigation period. However, insufficient data was provided to realign all data to calendar years over the injury analysis period.

### 6.2.1 Customs and Border Protection's assessment

Having regard to all available market information, Customs and Border Protection considers that during the injury analysis period the Australian market for GCLs contracted in 2007/08. 2008 data suggests that the market is returning to previous levels.

Customs and Border Protection also considers that the changes in the market reflect changes in the volume of GCLs sold by the Australian industry. The chart indicates that the volume of GCLs sold by the importer and/or distributor of Chinese GCLs has remained relatively stable.

### 6.3 Market structure

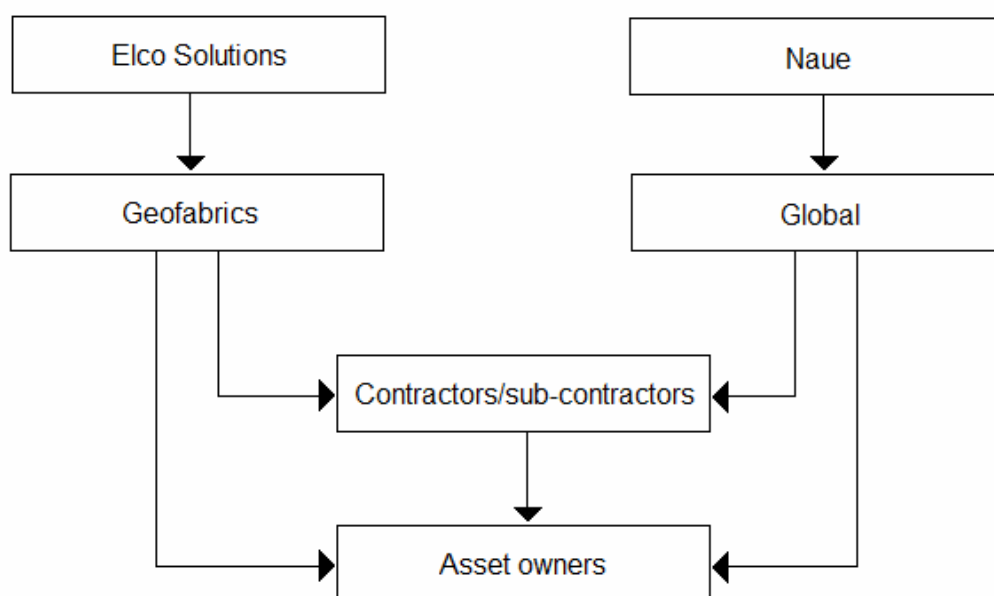
Customs and Border Protection understands that the Australian GCL market comprises four market segments:

1. *landfill segment*: characterised by large contracts typically from 10,000 to 80,000 square metres (sqm), but much larger contracts are not uncommon;
2. *mining segment*: also characterised by large contracts of around 30,000 sqm;
3. *building and construction segment*: typically consists of small contracts ranging from 1,000 to 30,000 sqm. The physical dimensions of the rolls of GCLs sold into this segment are much smaller than the landfill and mining segments because of the nature of the application which consists largely of basement waterproofing; and
4. *consumer segment*: characterised by low volume sales from one roll up to 1,500 sqm.

Customs and Border Protection also understands that the landfill and mining segments are project driven, often with long lead times between winning the contract and supply of the products.

## 6.4 Marketing and distribution

The Australian product is manufactured by Elco Solutions and distributed by Geofabrics. The imported German product is manufactured by Naue and imported and distributed by Global. In relation to large volume contracts, sales are made to contractors/ subcontractors (typically specialist GCL lining installers) or direct to asset owners (i.e. the entity that owns the facilities where GCLs are to be installed) as illustrated below.



GCLs are typically manufactured and delivered directly to site to reduce double handling as much as possible. Elco Solutions, Geofabrics and Global store limited quantities of GCLs at certain locations around Australia: Geofabrics maintains storage facilities in Queensland, New South Wales, Victoria, South Australia and Western Australia, whereas Global maintains storage facilities in New South Wales, Queensland and Western Australia.

## 6.5 Competition in the market

Sales to the larger volume contracts are usually determined by open tender arrangements with Geofabrics competing directly with Global and importers/distributors of Chinese product.

The major parties in a tendering process are the asset owners, the consultant responsible for design and specifications for the project, and the contractor/sub-contractor contracted to install the liners.

Customs and Border Protection sent questionnaires to purchasers of GCLs in relation to a number of significant GCL supply contracts awarded in 2008. These supply contracts related to landfill and mining projects identified in the application, and during verification visits to the Australian industry and the importer of German GCLs.

Customs and Border Protection found that price was only one consideration in purchasing decisions, and that specification of quoted grade/ fit for purpose, availability of supply and services offered by supplier were also important. Customs and Border Protection considers that while there are a number of factors relevant to the decision to purchase GCLs, price remained an important consideration.

Customs and Border Protection also found that suppliers of GCLs often provided quotes to a number of contractors/sub-contractors tendering for a project. In some cases the contractors/sub-contractors would approach one supplier directly for a quote and would not seek quotes from other suppliers. However even in these cases competition for the GCL supply contract was often present as it was not known which contractor/sub-contractor had been awarded the tender.

Customs and Border Protection found it was not uncommon for one GCL supplier to be aware of the price of its competitor, either specifically in relation to a particular project or in terms of a general awareness of its competitor's historical prices. At times the understanding of prices by competitors at particular projects was very accurate, but at other times not so accurate.

## **6.6 Responses to the SEF**

### **6.6.1 Geofabrics**

Geofabrics submitted that it agrees with Customs assessment of the structure of the Australian market but would highlight that a loss of a key tender contract in one of the larger landfill or mining market segments to imports, can significantly impact future tender contract proposals for a lengthy period of time (possibly in excess of 12 months).

## **7 THE DUMPING INVESTIGATION**

Dumping occurs when the export price of a product is less than the normal value of the same (or similar) product in the domestic market of the country of export. This section explains the results of Customs and Border Protection's investigation into whether GCLs have been exported from Germany to Australia at dumped prices during the investigation period.

### **7.1 Exporter and importer participation**

The applicants identified Naue as the only producer/exporter of GCLs from Germany. Using its commercial import data, Customs and Border Protection identified that Naue appeared to be the only exporter or supplier of GCLs from Germany during the investigation period. Customs and Border Protection sent an exporter questionnaire to Naue.

On the basis of information gathered during the importer visit, information available to Customs and Border Protection from its commercial import data, and other relevant information, Customs and Border Protection considered that Naue was the only exporter of GCLs from Germany to Australia during the investigation period.

Customs and Border Protection received a full response to the exporter questionnaire from Naue. Customs and Border Protection subsequently visited the headquarters of Naue and verified cost and sales information provided in its submission. Naue provided access to all relevant records and provided copies of relevant documents as requested by Customs and Border Protection.

The applicants identified Global as the only importer of GCLs from Germany. Customs and Border Protection from its commercial import records identified that Global appeared to be the only importer of GCLs from Germany during the investigation period. Customs and Border Protection sent an importer questionnaire to Global.

Customs and Border Protection received a full response to the importer questionnaire from Global. Customs and Border Protection subsequently visited the office of Global to verify information provided in its submission. Global provided access to all relevant records and provided copies of relevant documents as requested by Customs and Border Protection.

### **7.2 Export price**

#### **7.2.1 Customs and Border Protection's assessment**

Based on the information verified during visits to Global and Naue, Customs and Border Protection considers that, in relation to all GCLs exported to Australia in the investigation period by the exporter, the goods have been:

- exported to Australia otherwise than by the importer;
- have been purchased by the importer from the exporter; and
- these purchases of GCLs by the importer were in arms length transactions.

Export price calculations form Confidential Attachment 2.

### **7.2.2 Conclusion**

Customs and Border Protection considers that sufficient information has been furnished to enable export price be ascertained under subsection 269TAB(1)(a) using the price paid or payable for GCLs by the importer, 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. Specifically, Customs and Border Protection has based its export price calculations on the prices contained in Naue invoices for GCLs sold to Global and exported in the investigation period.

## **7.3 Normal Value**

### **7.3.1 Customs and Border Protection's assessment**

Based on the information verified during the visit to Naue, Customs and Border Protection considers that sufficient information has been furnished to enable normal values to be established in terms of subsection 269TAC(1), using the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter. Specifically, Customs and Border Protection has based its normal value calculations on the prices contained in Naue invoices for GCLs sold domestically in Germany.

In calculating normal values Customs and Border Protection has made adjustments to the domestic selling prices, in terms of subsection 269TAC(8), to ensure that the normal values are properly comparable with export prices. Adjustments were made in relation to differences in domestic and export prices arising from different domestic and export credit terms; different domestic and export inland freight; and export clearance and FOB charges (which do not apply to domestic sales).

In addition, where Customs and Border Protection found no sales by Naue in the domestic market that were in the ordinary course of trade for the grade directly comparable to one of the grades exported to Australia, Customs and Border Protection made adjustments for the physical differences between the relevant export grade and the next most comparable grade sold domestically.

Normal value calculations form Confidential Attachment 3.

### **7.3.2 Conclusion**

Having regard to all relevant information, Customs and Border Protection considers that sufficient information has been furnished to enable normal values to be determined under subsection 269TAC(1), using the prices contained in Naue invoices for GCLs sold domestically in Germany during the investigation period.

## **7.4 Dumping margins**

### **7.4.1 Customs and Border Protection's assessment**

Customs and Border Protection compared the weighted average of export prices over the whole of the investigation period with the weighted average of

corresponding normal values over the same period, in accordance with subsection 269TACB(2)(a).

The weighted average dumping margin, for GCLs exported to Australia by Naue in the investigation period, was 26.7 per cent.

Dumping margin calculations form Confidential Attachment 4.

## **7.5 Responses to the SEF**

Interested parties' submissions in response to the SEF did not make any comment on the assessment of dumping.

## **7.6 Conclusion**

Customs and Border Protection found that all GCLs exported to Australia from Germany during the investigation period were at dumped prices. Customs and Border Protection found the weighted average dumping margin, for GCLs exported to Australia by Naue in the investigation period, was 26.7 per cent, and therefore not negligible within the meaning of subsection 269TDA(1).

## **8 ECONOMIC CONDITION OF THE INDUSTRY**

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

### **8.1 The Australian industry's claims**

The applicants claimed injury commenced from March 2008. The applicants claimed that dumping of the goods under consideration caused injury in the form of:

- lost sales volume;
- lost market share;
- price undercutting;
- price depression;
- price suppression;
- reduced profits and profitability; and
- various other economic factors.

Customs and Border Protection has examined the Australian industry's performance and the Australian market from 1 July 2005 to assess the industry's injury claims.

### **8.2 General approach to injury analysis**

In its assessment of injury, Customs and Border Protection used verified financial data provided by the applicants covering the financial years 2005/06, 2006/07, 2007/08 and the first half of 2008/09. Customs and Border Protection has only used the results for the first half of 2008/09 where it was meaningful in the context of the preceding three financial years i.e. where the data relates to unit amounts and percentages. However, where the analysis relates to yearly totals, Customs and Border Protection has not annualised the half-year results to estimate a total for 2008/09.

Customs and Border Protection was unable to conduct an analysis of the economic condition of the Australian industry on a calendar year basis (to match the investigation period which is 2008) as Australian industry data was not available in this format. However, as the Australian industry provided detailed sales data for the 18 months ending December 2008, Customs and Border Protection was able to conduct sales volume and price analyses separately for the calendar year 2008.

In addition to analysis of volume, price and profit data at aggregate levels (i.e. in relation to Geofabrics sales in the Australian market as a whole), Customs and Border Protection also examined such factors in relation to specific projects. In particular, Customs and Border Protection examined the details of quotes and bids in relation to the following projects involving GCL supplies in 2008:

Project	State
1. Boddington Gold Mine (Boddington)	WA
2. South Cardup Cell 7 Landfill (Cardup)	WA
3. Wingfield Eco-Resource Management Centre landfill (WERM)	SA
4. Woodford Island/Clarenza STP (Woodford Island)	NSW
5. BP Terminal Tank Farm Carrington (BP Carrington)	NSW
6. Beaudesert Central Landfill (Beaudesert)	QLD
7. Highbury Landfill (Highbury)	SA
8. Browns Plains SMART Tip (Browns Plains)	QLD

Customs and Border Protection noted that collectively the volume of GCLs supplied to these projects represented greater than 25 percent of the estimated market size for GCLs in Australia in 2008. Given that the GCL market is project driven, Customs and Border Protection considered that in its assessment of the economic condition of the Australian industry (and whether dumping has caused material injury) it was reasonable to place considerable weight on project-specific analyses, in particular the eight projects listed above. A summary of confidential information relating to the above projects forms Confidential Attachment 5.

### 8.3 Assessment of the economic condition of the Australian industry

#### 8.3.1 Price effects

Price effects may be in the form of:

- Price undercutting, which occurs when the imported product is sold at a price below that of the Australian industry's product;
- Price depression, which occurs when there is a reduction in the Australian industry's selling prices; and/or
- Price suppression, which occurs when price increases for the Australian industry's product, which otherwise would have occurred, have been prevented.

Global imported three grades of GCLs from Germany in 2008, namely, NSP 4300, NSP 4900 and BFG 5000. Based on the evidence gathered in the investigation, Customs and Border Protection found that these grades competed directly with the following grades of Australian manufactured product in the investigation period.

Bentofix® (German product)	Elcoseal® (Australian product)
NSP 4300	X1000
NSP 4900	X800; X1000; X2000
BFG 5000	X1000; X2000

Therefore, when comparing prices of dumped grades of GCLs from Germany, Customs and Border Protection has compared grades that have competed against each other in the Australian market.

### **Price undercutting**

The applicant claimed that from the beginning of 2008 German imports have been at prices which have significantly undercut Australian industry selling prices by levels of up to 21 percent. In support of its claims the applicants provided project summaries and intelligence reports in relation to Cardup, Boddington and the Cobram Cell 8 landfill project (Cobram)<sup>2</sup> contracts that were tendered in 2007/08 and 2008/09 as evidence of price undercutting by German imports.

Customs and Border Protection conducted a detailed analysis of the price bids for GCL supply at the Cardup and Boddington projects. Customs and Border Protection found in relation to one of these projects that the successful Global price undercut Geofabrics' price. In relation to the other project, Customs and Border Protection found that price was an important factor in the initial negotiation process which led to the German product being selected for testing and subsequently being named in the second set of specifications.

Customs and Border Protection also conducted an analysis at an aggregate level to assess whether German product was being sold at prices below Geofabrics' prices in the Australian market during the investigation period. Customs and Border Protection compared the weighted average selling price of Global with that of Geofabrics in 2008. The comparison was done on the basis of the six comparable grades shown in the table above. The comparison used the applicants' prices in the relevant half-year period that corresponded to the sales of particular grades of the German GCLs (Confidential Attachment 6 refers).

Customs and Border Protection found in relation to the six comparisons, the weighted average price of the GCL grade sold by Global was lower than the weighted average price of the grades sold by Geofabrics in three instances.

Customs and Border Protection considers that Geofabrics' selling price was undercut by Global in relation to the Boddington project. In addition, at the aggregate level Customs and Border Protection found that Global's weighted average prices for 2008 had, in three out of six comparisons of comparable grades, undercut the prices of the applicants' GCLs.

### **Price depression**

The applicants claimed that imported German product continues to be offered on the Australian market at prices which requires Geofabrics to reduce selling prices to secure volume. The applicants further claimed that as a significant proportion of

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<sup>2</sup> During the course of the investigation it was established that the supply of GCLs for the Cobram project was won by Geofabrics, and this was not until 2009 i.e. outside of the investigation period. The Cobram project has therefore not been considered in this section of the report.

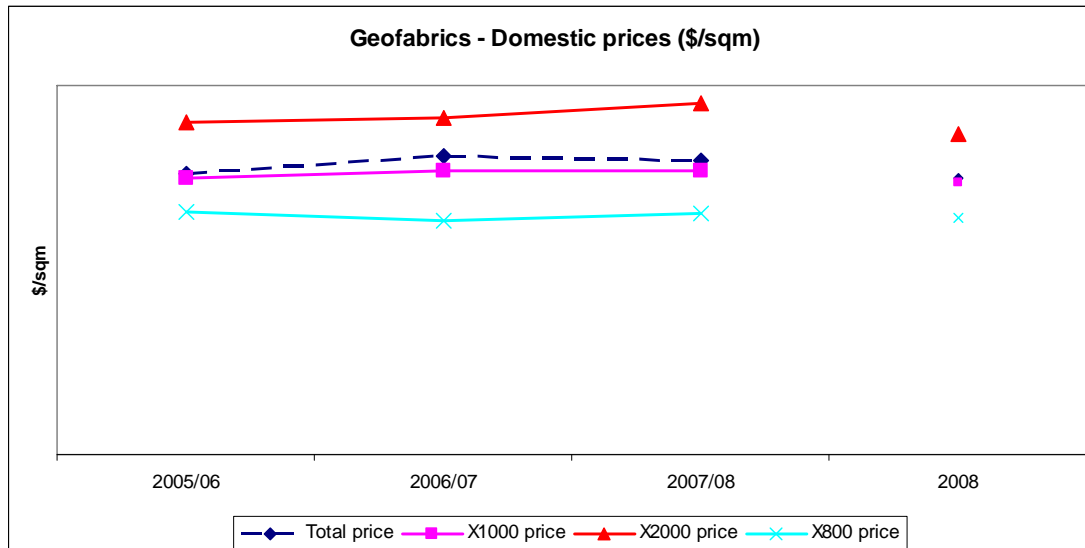
GCL sales are made on a contract basis, competition is based upon recently settled prices at contract sales and the lower prices being offered by Global had created a new, lower level of price expectation which was evidenced through the successive contracts for which Geofabrics was competing with German GCLs.

Geofabrics claimed price depression in relation to the GCL supply contracts for the Woodford Island, WERM, Beaudesert, Browns Plains, and Highbury projects.

Geofabrics claimed that the prices it offered in relation to these contracts were lower than prevailing market prices as a result of competition with dumped GCLs from Germany.

To test the claim made by Geofabrics, Customs and Border Protection compared the unit selling prices achieved by Geofabrics in relation to the above named projects to its national weighted average selling prices. In each case Customs and Border Protection found the price for these projects to be lower than the weighted averages achieved in the corresponding and previous financial years.

Customs and Border Protection also analysed aggregate domestic selling prices and noted that Geofabrics' weighted average price for all GCLs increased from 2005/06 to 2006/07, then decreased in 2007/08. The weighted average price was lower again for the investigation period, which was at a level lower than any preceding period. The trends in Geofabrics' domestic selling prices for its major grades and overall are shown in the following chart (Confidential Attachment 7 refers). Once again, it should be noted that the 2008 data overlaps with the 2007/08 data.



Customs and Border Protection notes that the reason for the decrease in weighted average prices in the investigation period, when compared to all preceding years, is that the weighted average price in the second half of 2008 was significantly lower than in any preceding year.

Customs and Border Protection considers that its analysis of the aggregated sales data, and its analysis of project specific sales data for the projects named above indicate that Geofabrics experienced significant price depression in the investigation period.

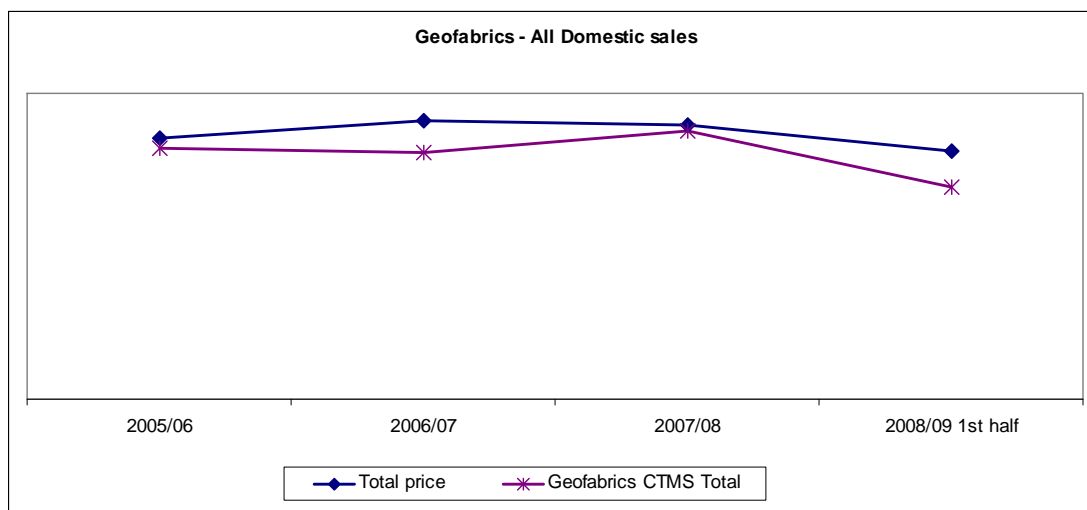
### Price suppression

The applicants claimed that cost increases for Elcoseal X1000, the highest volume grade of GCL, have not been offset by price increases in the market. The applicant claimed that German imports at dumped prices have prevented Geofabrics from increasing its prices to recover the cost of raw material increases and fuel surcharges incurred in 2007/08.

Customs and Border Protection, in its overall analysis of domestic selling prices, noted that:

- the margin between unit selling price and unit CTMS increased in 2006/07, reduced in 2007/08 and increased in the first half of 2008/09;
- the margin increase in the first half of 2008/09 was due to prices decreasing at a lower rate than the decrease in CTMS; and
- The decrease in CTMS was due to efficiencies gained in the manufacturing process which were unrelated to sales.

The trends in Geofabrics' domestic selling prices and CTMS are shown in the following chart (Confidential Attachment 7 refers).



Customs and Border Protection noted that the trends, and relationships, of selling prices and CTMS for the individual grades X800, X1000 and X2000 were reasonably similar to that depicted in the chart above.

Customs and Border Protection considers that the relationship between CTMS and price indicates price suppression in 2007/08. Customs and Border Protection also considers that price suppression continued into the first half of 2008/09 as the margin would have been greater if the price was not significantly depressed. Customs and Border Protection noted that if the CTMS was maintained at the same level as in 2007/08 (which would have been the case if cost efficiencies had not been realised), total price would have been below CTMS in the first half of 2008/09 i.e. Geofabrics would have been trading at a loss.

Having regard to the project-specific sales data for the projects listed above, Customs and Border Protection considers Geofabrics' prices at those projects were lower than the weighted average selling prices of all GCL sales for corresponding and preceding years.

Customs and Border Protection considers that its analysis of aggregate data and project specific data indicates that Geofabrics experienced significant price suppression in the investigation period.

### 8.3.2 Volume effects

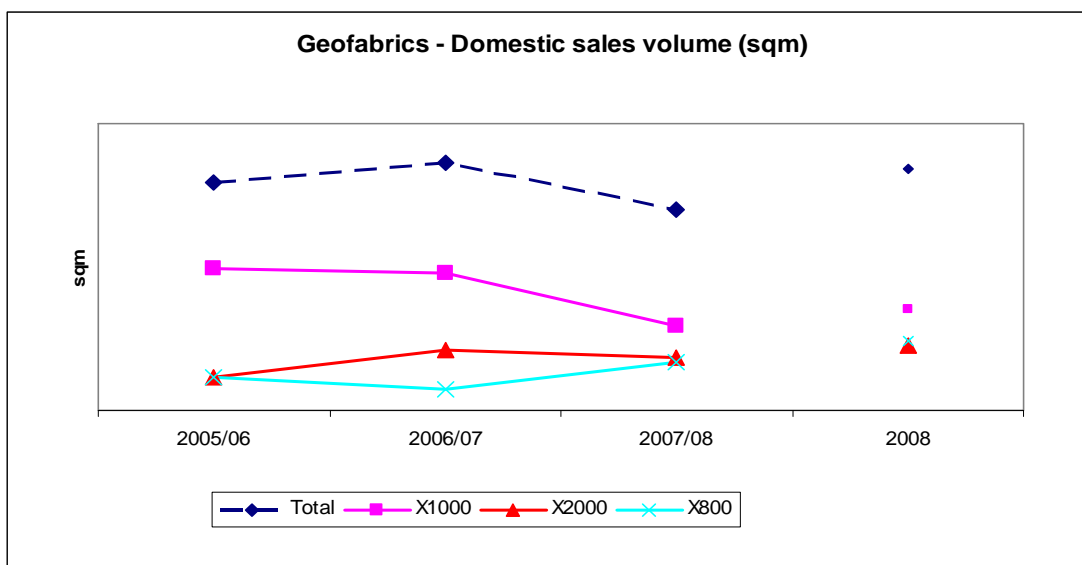
#### Sales volume

The applicants claimed in the application that the Australian industry lost sales volume in 2008 to German imports in relation to:

- lost contracts tendered in 2007/08 and 2008/09 in relation to Cardup and Boddington projects; and
- an additional volume (estimated) of the goods that were allegedly imported during 2007/08 and the first quarter of 2008/09 for unspecified applications.

The following chart shows the movement of total domestic GCL sales volume for Geofabrics from 2005/06 to 2007/08 and calendar year 2008 (Confidential Attachment 7 refers). Once again, it should be noted that the 2008 data overlaps with the 2007/08 data. Customs and Border Protection in its analysis of the data noted that:

- Geofabrics' total domestic sales volumes for GCLs increased from 2005/06 to 2006/07 and then decreased in 2007/08 to a point below that of 2005/06;
- the size of the Australian market declined in 2007/08 to a level below that in 2005/06; and
- sales volume increased in 2008 to a similar level as that in 2006/07.



Customs and Border Protection considers that the analysis of aggregated sales volume data indicates that Geofabrics did not lose total domestic sales volume in the investigation period when compared to preceding financial years. However, Customs and Border Protection considers that the applicants lost sales volume in relation to the Boddington and Cardup projects.

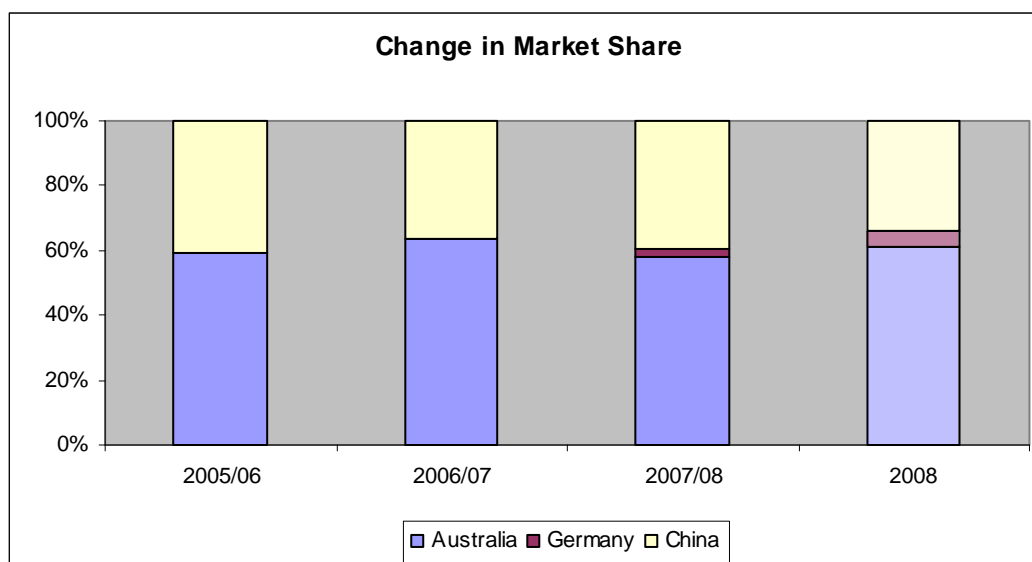
### **Market share**

The applicants claimed that the loss of the Boddington and Cardup contracts resulted in a loss of market share of approximately 3.5 percent of the Australian GCL market in 2007/08.

Customs and Border Protection analysed verified aggregated sales volumes by Geofabrics and Global as well as estimated sales volumes by the sellers of Chinese product over the injury analysis period. This analysis indicates that:

- Geofabrics' market share increased from 2005/06 to 2006/07 at the expense of imported Chinese product and then decreased in 2007/08 to a level similar to that in 2005/06 due to increased market share by the Chinese product and the gaining of market share by the German product with its introduction into the Australian market: and
- the 2008 data shows Geofabrics and Global have both increased their market share at the expense of Chinese imported product.

The following chart illustrates these trends (Confidential Attachment 1 refers). Once again, it should be noted that the 2008 data overlaps with the 2007/08 data.



Customs and Border Protection considers that its analysis of aggregated sales data indicates that Geofabrics did not lose market share in the investigation period when compared to preceding financial years. However, Customs and Border Protection considers that the lost sales volume in relation to the Boddington and Cardup projects represented a loss in market share of approximately four percent of the estimated market size in the investigation period.

### 8.3.3 Profit effects

The applicants claimed that the decline in domestic sales volumes and the inability to raise selling prices to recover increased costs, particularly associated with the X1000 grade had contributed to reductions in profits and profitability for Geofabrics. The applicants claimed that the longer term impact of the dumped prices will see further declines in selling prices for the Australian industry followed by significant reductions in profits and profitability.

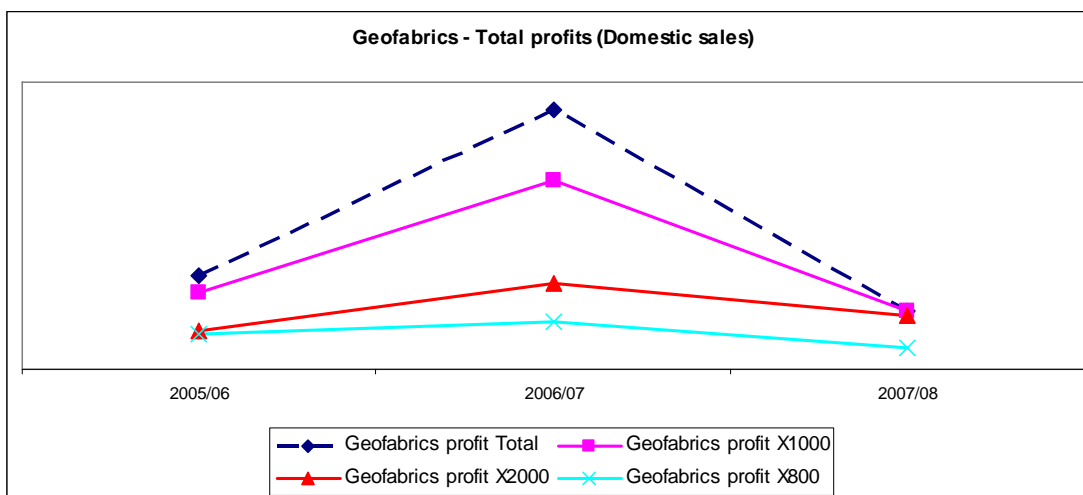
The applicants supported their claims of reduced profits and profitability with reference to the following projects:

- Cardup - lost sales;
- Boddington - lost sales;
- Woodford Island - reduced revenue and profits from price pressure from German imports; and
- WERM - reduced revenue and profits from price pressure from German imports.

The applicants further supported their claims of reduced profits and profitability with profit and profitability data for each grade of GCL manufactured by Elco Solutions.

#### Profit

Customs and Border Protection's analysis of Geofabrics' total profits on domestic sales showed that profits increased from 2005/06 to 2006/07, then decreased in 2007/08 to a point lower than in 2005/06. These trends are shown in the following chart (Confidential Attachment 7 refers).



Customs and Border Protection also examined the profits for domestic sales for the first half of 2008/09. This data indicated that total profits for domestic sales of all grades, and for each of the individual grades shown in the chart, is likely to be higher in 2008/09 than in 2007/08. Customs and Border Protection considers the primary

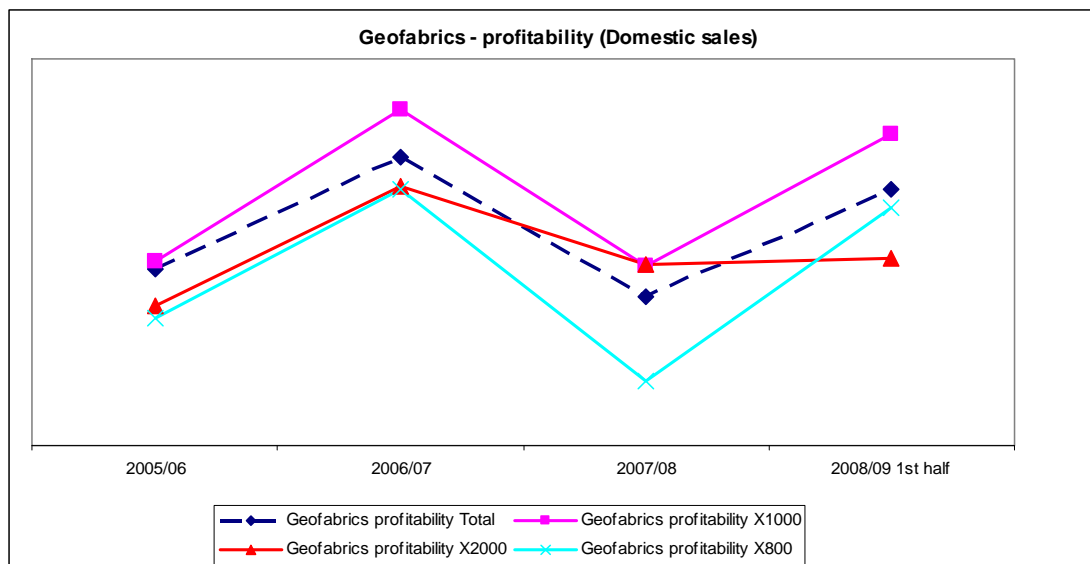
reason for the increasing profits in the first half of 2008/09 is the reduction in CTMS for that period.

Customs and Border Protection considers that the aggregate data indicates that the applicants are not likely to have experienced reduced profits at the aggregate level in the investigation period. However, Customs and Border Protection considers that the lost sales and the significantly depressed/suppressed prices discussed above caused lost profits for the Australian GCL industry in the investigation period.

### **Profitability**

Profitability is a measurement of profits as a percentage of net sales revenue.

Customs and Border Protection's analysis of Geofabrics' profitability for domestic sales showed that profitability increased from 2005/06 to 2006/07, then decreased in 2007/08 to a point lower than in 2005/06. Profitability then increased again in the first half of 2008/09. These trends are shown in the following chart (Confidential Attachment 7 refers).



Customs and Border Protection considers that aggregate data indicates the applicants are not likely to have experienced reduced profitability overall in the investigation period. However, Customs and Border Protection considers that the lost sales and the significantly depressed/suppressed prices discussed above caused reduced profitability for the Australian GCL industry in the investigation period.

## **8.4 Other economic factors**

Data provided by the applicants in relation to other relevant economic factors for GCLs, for the financial years 2005/06, 2006/07, 2007/08, and the first half of 2008/09, showed that:

- the value of fixed assets employed by the applicants decreased from 2005/06 to 2006/07, decreased again in 2007/08, then increased in the first half of 2008/09;

- the value of capital invested remained stable over the injury analysis period;
- the expenses in relation to research and development increased in each period of the injury analysis period;
- revenue for GCL sales made domestically increased from 2005/06 to 2006/07 and decreased in 2007/08. It appears that revenue in 2008/09 will increase again. Revenue for GCL sales made for exports followed a similar path;
- the return on investment has decreased over the injury analysis period. Customs and Border Protection notes a submission from Naue requesting that Customs and Border Protection provide reasons for this particular conclusion and whether it is considered to be an indicator of material injury. Customs and Border Protection considers the reasons for the results are confidential. Customs and Border Protection considers return on investment only one of many factors that must be considered in assessing injury, and it has accorded commensurate weight to this analysis in assessing injury;
- the capacity remained constant over the injury analysis period, and capacity utilisation increased from 2005/06 to 2006/07, decreased in 2007/08, then increased again in the first half of 2008/09;
- the number of people employed by the applicants increased from 2005/06 to 2006/07, decreased in 2007/08, then increased again in the first half of 2008/09;
- the volume of closing stock held by the applicants decreased from 2005/06 to 2006/07, increased in 2007/08, and remained relatively stable in the first half of 2008/09;
- the balance of accounts receivable remained relatively stable over the investigation period except for a lower balance in 2007/08;
- the receivables turnover ratio increased from 2005/06 to 2006/07, and again in 2007/08, then decreased in the first half of 2008/09;
- the inventory turnover ratio increased from 2005/06 to 2006/07, decreased in 2007/08, and then decreased again in the first half of 2008/09; and
- the total wages paid increased from 2005/06 to 2006/07 and remained relatively stable for the remainder of the injury analysis period.

## **8.5 Responses to the SEF**

### **8.5.1 Geofabrics**

Geofabrics submitted that it concurs with Customs and Border Protection's assessment that the extent of price depression and price suppression is significant as it reduced selling prices for GCLs significantly against imports of dumped GCLs from Naue (that were confirmed to have weighted average dumping margins of 26.7 percent).

### **8.5.2 Naue**

In its response to the SEF, Naue considers that:

1. There has been an error of law by Customs:

- Failure to give any consideration to the requirements set out in the Ministerial Direction on material injury, in particular to:
  - o whether there has been a material diminution in profit;
  - o the normal ebb and flow of business; and
  - o loss of profit and profitability in relation to projects rather than in relation to the industry as a whole.
- In its consideration of price undercutting and price suppression, in particular its:
  - o failure to comply with s269TAE of the Customs Act and to have regard to price;
  - o failure to consider sales within the investigation period to determine price undercutting; and
  - o mis-interpretation of the meaning of price suppression.

2. Customs is in breach of its obligations under the Anti-Dumping Agreement:

- In making a determination with regard to price and volume effects in a manner which was not based on positive evidence nor involved objective examination (Article 3.1).
- By (not) considering other factors which may have contributed to material injury to the applicants (Article 3.5).
- By failing to provide Naue and Global the full opportunity to defend their interests and provide access to documents in a timely manner (Articles 6.2 and 6.3).
- By not providing a non-confidential version of a summary of a telephone conversation with Volclay that would permit a proper understanding of the substance of the information submitted by Volclay in confidence to Customs (Article 6.5.1).

3. Customs has denied Naue natural justice by placing on the public file a file note of a conversation with Volclay which completely ignored the requirement to provide an adequate non confidential summary. Further, Customs only acknowledged this fact days before the SEF was published, and placed a file note on the public file advising of other communications with Volclay and acknowledgement that it would be having regard to invoices obtained from Volclay.

Additionally, Customs:

- Decided not to meet with Volclay because of the limited time proposed by Volclay even though such a meeting could have been productive in determining the role that Chinese imports played in the market place.

- Disregarded information provided by Naue on Chinese import pricing.
4. In regard to the methodology of the investigation:
- Financial year versus calendar year:
    - o the applicants submitted information in the financial year format, and then requested the investigation period be the calendar year 2008 on the basis that there was no manifestation of injury until the first importation of German GCL in March 2008. There is no apparent reason why Customs did not either request the applicants align information on calendar years or why Customs and Border Protection could not have adjusted the information to accord with calendar years.
      - Naue submits that there is no obligation to have an investigation period coincide with a financial year, even though it may be convenient to Customs to do so;
      - Naue also submits that Customs cannot adopt a position that places more weight on findings if regard is had to financial data and ignores other information. If Customs was to adopt this position it would in effect limit its analysis to half the investigation period with the result being that the other half is ignored;
      - Naue also points out that the evidence relied upon by Customs must be probative (logically persuasive) and that in the circumstances this does not mean total reliance on end of year financial data;
      - Naue also considers that in order to make any finding of material injury and causal link the analysis needs to be based on the findings in the investigation period. These findings would be best reflected by having regard to a finding based on both financial year data that is for 2007/08, separating out the data prior to 1 January 2008 and including data for the remainder of that year;
  - Specific projects
    - o Customs has provided no proper analysis why investigation of specific projects was considered representative of a proper assessment of factors in assessing material injury. There is no evidence to indicate that these projects were not simply the ones put forward by the applicants in relation to their claim. No basis is provided to determine if these projects were truly representative and suitable to make an accurate assessment of injury.
5. In regard to the claim of injury:

- Sales volume: there was no loss in aggregate sales volume over the investigation period. It is the analysis of lost sales volume at the aggregate level Customs should be focussing on, not individual projects;
- Market share: there is no actual loss of market share over the investigation period; the market share of the applicants was higher in 2008 than in any other year; there is no probative evidence that would point to this loss of market share as demonstrating that Geofabrics had lost a sufficient share of the Australian market to have caused material injury; Customs has provided no basis for its estimate of Global's share of the Australian market during the investigation period;
- Price undercutting:
  - o Customs has, in considering the question of price undercutting, failed to follow its own legal interpretation of s269TAE of the Act. Price undercutting can only exist where there is a price i.e you cannot have price undercutting for quotes, where a project has not been finalised; or on the basis of weighted average prices or actual prices for contracts for which Global did not even bid or win;
  - o Customs has conducted a comparison on grades which compete with each other but for which there are no actual sales and in many cases no bids to compare;
  - o In relation to the one project Customs found price undercutting:
    - Customs has failed to quantify the amount of undercutting or even that it was significant;
    - Given that there were two types of German GCL supplied to the project, there is no indication given by Customs as to whether the undercutting applied to one or both or whether it was determined on a weighted average basis;
    - There is no consideration of whether other factors which made the overall contract cheaper, were considered as factors that determined whether or not the contract would have been awarded to Geofabrics in any event;
    - Even if regard is had to other factors there is no conclusive evidence that the price undercutting necessarily had any impact on the decision to buy the imported German GCL;
- Price depression: the methodology used to make a determination of price depression is contrary to the Anti-Dumping Agreement and to s.269TAE;
- Price suppression: finding of price suppression was done without having regard to the argument repeatedly put by the applicants themselves, based on the claimed inability to increase prices to recover increased costs, and contrary to a fundamental understanding of what is meant by price suppression; methodology used is contrary to the Anti-Dumping

Agreement and the Customs Act i.e. there is no evidence that prices should have increased without a reference to costs; and

- Profit and profitability:
  - o Customs finding of material injury ignores that the profit and profitability of the applicants had increased substantially during the investigation period, by isolating the injury indicators to a subset of projects and claiming that injury was observed at that level; the proper question for Customs to consider is whether there has been a material diminution in profit in the investigation period. Customs is not entitled to look at a sub-category of projects to determine that profits have been lost;
  - o Customs is arguing that the industry should have been more profitable than it already has been shown to be, and if it is not then this is a 'loss'. This interpretation is inconsistent with the obligations imposed on Customs under the Ministerial Direction on Material Injury;
  - o The Ministerial Direction also requires Customs to consider the normal ebb and flow of business in relation to profit. When regard is had to the profit and profitability of the industry as a whole in at least part of 2007/08 which was unaffected by dumping, profits were lower than in the previous year which clearly cannot be attributed to dumped imports and were much better in 2008/09 than 2007/08 and were increasing in the first half of 2008/09;
  - o Customs appears to be relying on an argument that the applicants' profit and profitability would have increased if it had not lost the two contracts in Western Australia and it was not forced to lower its prices and thereby suffer price depression and price suppression. The Ministerial Direction on material injury requires that Customs have regard to the fact that profits are improving in coming to a determination on injury. The argument that profits should have been better does not constitute a loss of profit and is still not sufficient for a finding of injury.
- Other economic factors
  - o Naue is critical of the weight given to return on investment as no reliance has been placed by Customs on any "other relevant economic factor". In fact other economic factors show that the overall condition of the Australian industry is healthy. The level of profit and profitability during the investigation period has increased as has market share and overall market size.

### 8.5.3 European Commission

The European Commission submitted that it would appear in this case the domestic industry was not suffering from any material injury, in particular in regard to:

1. sales volume: when looking at the total period under consideration, i.e. from 2005/06 to 2008, the sales volume actually increased overall. Therefore no loss of sales volume to German imports has occurred;
2. market shares: the domestic industry has actually gained market shares overall when considering the total period of investigation;
3. price undercutting: Customs made six comparisons and established undercutting in three instances and no undercutting in three instances. The conclusion that the domestic industry's prices were undercut by the German imports is surprising since it simply disregards the fact that for half the comparisons made, no undercutting was established. The Commission submits that an objective analysis should consider the results of all the transactions analysed and it is likely that on that basis no undercutting could be established overall;
4. price suppression: Customs considers that there is price suppression in 2007/08 but disregards the developments during the overall period under investigation. It should be noted that Customs has only considered the period when costs increased more than prices and completely disregarded the situation during the other years. When considering the overall period under investigation price suppression has not been conclusively established; and
5. Profitability: the conclusions on profitability are also based on the developments in 2007/08. The overall trend in profitability is increasing and the level of profit achieved at the end of the last period is higher than in 2005/06.

## 8.6 Customs and Border Protection's assessment of submissions by Naue and the European Commission in response to the SEF

### 8.6.1 Naue's submission

#### *1. Error of law*

#### Ministerial direction on material injury

Contrary to the submission by Naue in response to the SEF, Customs and Border Protection does not consider that it has failed to give consideration to the requirements of the September 1990 Ministerial Direction concerning material injury.

Customs and Border Protection notes the Ministerial Direction advises the following:

- material injury is injury which is not immaterial, insubstantial or insignificant, and is greater than that likely to occur in the normal ebb and flow of business;
- material injury, or the threat thereof, will only rarely be taken as proven when the Australian industry producing like goods has not suffered, or is not threatened with, a “material” diminution of profits or when the dumped or subsidised imports do not hold (or threaten to hold) a sufficient share of the Australian market to cause or threaten “material injury”; and
- each case is to be judged on its merits.

Customs and Border Protection considers that its analysis of injury indicates that the Australian Industry has suffered injury during the injury analysis period, which is not immaterial, insubstantial or insignificant. Customs and Border Protection considers that this injury is greater than is likely to occur in the normal ebb and flow of business, having regard to levels and trends of volume, price and profit over the entire injury analysis period, and to the project-driven nature of the market.

Customs and Border Protection notes Naue’s argument that a major (if not the major) consideration in determining profit and profitability during the injury analysis period was CTMS. Naue seems to suggest that the patterns of injury reported in the SEF rely on the fluctuations of CTMS during the injury analysis period, which is within the normal ebb and flow of business. Customs and Border Protection draws attention to the fact that, as the reduction in CTMS during the injury analysis period was due to proactive measures taken by the applicant (the specifics of which are confidential) as opposed to the normal ebb and flow of CTMS.

In terms of analysing if there has been a material diminution of profit, Customs and Border Protection accepts the definition of ‘diminution’ in Naue’s submission in response to the SEF as meaning ‘a decrease or reduction’ the opposite of which is ‘growth’. Having regard to this definition, Customs and Border Protection maintains that the Australian Industry has suffered a material diminution of profits during the injury analysis period. Specifically, the Australian industry’s profits were reduced when compared to the level of profits that would have been achieved in the absence of dumping.

It is relevant to note that, (under s.296TAE(3)(e)) it is valid to consider the level of profits earned by the Australian Industry when determining whether material injury has been or is being caused. There is no requirement to ensure a deterioration of profits over time.

Customs and Border Protection takes note that Naue’s submission stresses the upward trend of profitability displayed within the profitability analysis of the SEF. However, as stated in the SEF, Customs and Border Protection regards this improvement in profitability to be related to a decrease in CTMS.

In regard to Naue’s claim that the applicants profit and profitability increased substantially during the investigation period, Customs and Border Protection found that based on an analysis of the available information the applicants are not likely to have experienced reduced profits and profitability at the aggregate level in the

investigation period. However Customs and Border Protection considers that lost sales and significantly depressed and suppressed prices have caused lost profits and reduced profitability for the Australian GCL industry in the investigation period.

Customs and Border Protection also notes the fact that the Ministerial Direction advises that each case is to be judged on its merits. Customs and Border Protection considers that it has reviewed all available evidence in this case and has determined on the merits of the case that the Australian Industry had suffered material injury during the injury analysis period.

In relation to Naue's claim that Customs had regard to 'loss of profit and profitability in relation to projects rather than in relation to the industry as a whole', Customs and Border Protection considers this observation is incorrect. On the contrary, Customs and Border Protection had regard to the profit and profitability indicators at both the specific project level and at the aggregate sales level.

#### Price undercutting and price suppression injury analysis

Firstly, Naue claims that Customs and Border Protection's price undercutting analysis in this case is contrary to s269TAE. Specifically, Naue's submission indicates that Customs and Border Protection's price undercutting analysis does not have regard to actual achieved sale prices, and instead uses quotes for projects that have not yet been awarded or for contracts that Global did not win.

Customs and Border Protection stresses the fact that, as stated in the SEF, its price undercutting injury analysis has been done by comparing:

- the actual successful winning prices of Global at the Boddington and Cardup projects to the unsuccessful bids by Geofabrics for project level undercutting analysis; and
- weighted average actual selling prices of both Global and Geofabrics during 2008 for aggregate undercutting analysis.

In each case, only actual achieved prices by Global were used for price undercutting analysis, which Customs and Border Protection considers is not inconsistent with the text of s. 269TAE.

Customs and Border Protection note's Naue's assertion that using a weighted average approach for aggregate price undercutting is not appropriate (and erroneous) in this case as the weight average of Global's prices only includes prices for two contracts (Cardup and Boddington). Customs and Border Protection notes that its weighted average aggregate analysis in fact includes all sales prices of GCLs achieved by Global during the investigation period and is not limited to a weighted average of Cardup and Boddington's prices.

Customs and Border Protection acknowledges that quotes provided by Global for projects that have not yet been awarded or were not won by Global have been used throughout the assessment that dumping has caused material injury to the industry (particularly in relation to the project-specific analysis). Customs and Border Protection considers that the pricing level of Global's quotes for projects it has not

been awarded are relevant considerations in determining injury and causation, and does not believe this is approach is inconsistent with s.269TAE.

In regard to Naue's claim that Customs has conducted a comparison of grades which compete with each other but for which there are no actual sales, see Customs and Border Protection's assessment of price undercutting and price suppression analysis later in this report.

Secondly, Naue claims that Customs and Border Protection failed to consider sales within the investigation period to determine price undercutting. Customs and Border Protection are unsure precisely what this relates to, but note that, for its price undercutting analysis, Customs and Border Protection only had regard to actual sales of GCLs by Global and Geofabrics made during the calendar year 2008 (the investigation period), as was stated in its SEF.

Thirdly, Naue claims that Customs and Border Protection has misinterpreted price suppression. Naue states that its view is that price suppression is not concerned with a reduction in prices but with whether price increases for the Australian product, which would other wise have occurred, have been prevented. Customs and Border Protection agrees with this position, as was stated in the SEF.

Naue notes the Draft Dumping Manual's description of price suppression as 'the inability to adjust prices in line with movements in costs' and links this to the applicant's decreased CTMS towards the end of the injury analysis period, deducing that the proven downward trend of the Australian Industry's prices during the investigation period is in line with its decreasing CTMS and thus no suppression has occurred.

As noted in the SEF, Customs and Border Protection considers that, despite a decrease in the Australian Industry's CTMS towards the end of the injury analysis period, price suppression has occurred. Customs and Border Protection notes that the Australian Industry's decreasing CTMS relates primarily to proactive steps taken by the industry to decrease their CTMS. The intended effect of this was to increase the Australian Industry's profit margin, assuming that sales could be achieved at the same level of pricing after a reduction in CTMS. However, as displayed in the injury analysis, while CTMS was decreasing, so were the Australian Industry's weighted average selling prices and thus a larger profit margin was not achieved by the Australian industry.

Customs and Border Protection, in analysing price suppression, has used the definition stated in this report. Customs and Border Protection is of the view that this definition is consistent with the general meaning of price suppression provided in Article 3.3 of the Anti-Dumping Agreement. In this context, Customs and Border Protection considers it reasonable to have regard to a comparison of prices with costs. It also considers it reasonable to assess whether the prices for the Australian industry's product are lower than prices that would have been achieved in the absence of dumping.

## *2: Breach of obligations under the Anti-Dumping Agreement*

Customs and Border Protection notes the claim by Naue in its submission in response to the SEF that Customs and Border Protection is in breach of its obligations under various articles of the Anti-Dumping Agreement (ADA).

### **Article 3.1 of ADA**

Naue claims that Customs and Border Protection is in breach of its obligations under Article 3.1 as its determination of injury has:

1. not been based on positive evidence; and
2. has not involved an objective examination.

In terms of relying on positive evidence, Customs and Border Protection highlights the fact that all information used to determine injury to the Australian Industry was based on financial information supplied by the applicants and Global. This information was verified by Customs and Border Protection during its visits to these parties. Customs and Border Protection considers this information to be credible for the purpose of analysing whether injury has occurred.

Naue claims that Customs and Border Protection has breached Article 3.1 of the ADA as its consideration that Geofabrics was likely to have won the Cardup contract (had Global been unable to secure dumped GCLs from Germany) relies on an assumption and not positive evidence. Customs and Border Protection considers its position reasonable given the positive evidence it gathered in relation to the Cardup project from the applicant, the importer and the purchaser. The detailed analysis of evidence relating to Cardup is Confidential Attachment 8.

Customs and Border Protection is unclear of the reasoning behind Naue's claim that its determination of injury did not involve an objective examination. Customs and Border Protection considers that its positive determination of injury relies upon its analysis of verified evidence collected throughout the investigation. In Customs and Border Protection's view, this analysis leads to the conclusion of a positive finding of injury. Customs and Border Protection notes there has been no evidence provided to substantiate the Naue claim of bias, and Customs and Border Protection completely refutes any suggestion that any decision has been influenced by any bias.

### **Article 3.5 of ADA**

In its submission, Naue states that Customs and Border Protection has breached its obligations under Article 3.5 of the ADA 'by (not) considering other factors which may have caused injury to the applicants'.

Customs and Border Protection refutes this claim, having considered the impact of numerous other factors that could have contributed to the Australian Industry's injury when making its determination of causation (Section 9.4 of this report refers).

**Articles 6.2 and 6.3 of ADA**

Naue's submission asserts its view that Customs has breached its ADA obligations by failing to provide Naue and Global the full opportunity to defend their interests and provide access to information in a timely manner (specifically in relation to Customs and Border Protection's actions of placing an inadequate confidential summary of a conversation held with Volclay on the public file).

Customs and Border Protection notes that:

- Article 6.2 of the ADA refers to the obligation to provide all interested parties with the full opportunity to defend their interests.
- Article 6.3 of the ADA states that confidential oral information shall only be taken into account in so far as it is subsequently reproduced in writing and made available to other interested parties.

It is in fact Article 6.4 of the ADA that obliges authorities to provide timely opportunities for all interested parties to see all information that is relevant to the presentation of their cases. Consequently, Customs and Border Protection will address all three articles here.

Customs and Border Protection considers that both Global and Naue have had full opportunity throughout the case to defend their interests. Both parties have had access to all documents placed on the public record and have taken full advantage of their right to provide submission in response to these documents, which have been taken into consideration by Customs and Border Protection in making their findings regarding the case.

Customs and Border Protection acknowledges that the public record version of a telephone conversation between a Customs and Border Protection officer and Volclay lacked sufficient detail to permit a reasonable understanding of the substance of the information submitted (as required by Article 6.5.1 of the ADA).

After receiving a submission from the representative for Global and Naue regarding this issue, Customs and Border Protection took steps to publish a more detailed summary of the telephone conversation but was unable to obtain Volclay's authority to disclose the information. Consequently, Customs and Border Protection has disregarded the information gathered during that conversation, consistent with Article 6.5.2 of the ADA. As a result, Customs and Border Protection considers that no such breach of obligations has occurred.

Customs and Border Protection notes Naue's concerns about timeliness relating to the publication of a file note on the receipt of invoices from Volclay, which was placed on the public record on 22 April 2009, soon before publication of the SEF. Customs and Border Protection points to the text of Article 6.4 of the ADA which states:

*Authorities shall whenever practicable provide timely opportunities for all interested parties to see all information that is relevant to the presentation of their cases...*

Customs and Border Protection advises that (as is stated in the file note itself) it received the invoices discussed in the file note on 14 April 2009, and spent some

effort corresponding with Volclay soon after to clarify the information provided. When it became evident that no further information would be furnished by Volclay, the file note was created and published on the 22 April 2009. Customs and Border Protection considers that, in the circumstances, it was not practicable to provide this information sooner. In any case, interested parties were subsequently able to respond to the SEF which discussed the Volclay invoices.

### **Article 6.5.1**

Naue's submission contends that Customs and Border Protection is in breach of its obligations under Article 6.5.1 to require parties providing confidential information to furnish adequate non-confidential summaries of this information. Again, this relates to the summary of a telephone conversation with Volclay that was placed on the public record.

This issue has been discussed previously in this report at section 8.6.1 Naue's submission - 1. Breach of obligation – Articles 6.2 and 6.3.

#### *3: Denial of natural justice*

Customs and Border Protection notes Naue's concerns that it was denied natural justice by Customs and Border Protection's actions of placing an annotated version of a telephone conversation on the public file that did not provide an adequate non-confidential summary of the conversation.

This issue has been discussed previously in this report at section 8.6.1 Naue's submission - 1. Breach of obligation – Articles 6.2 and 6.3.

Customs and Border Protection also notes Naue's concern that Customs and Border Protection did not meet with Volclay to discuss the role of Chinese GCLs in the market. As discussed in the SEF and in a file note placed on the public record on 22 April 2009, Customs and Border Protection experienced only limited cooperation from Volclay and determined that a meeting with Volclay would not be constructive or practicable in the circumstances.

Further, Naue asserts in its submission that Customs disregarded invoices between Volclay and CETCO, the Chinese manufacturer of GCLs, provided by Naue as evidence of Chinese product being sold to Australia at low prices. Naue claims that these invoices have equal probative value to the invoices obtained by Customs directly from Volclay in establishing the sales price of Chinese GCLs on the Australian market.

Customs and Border Protection disagrees with Naue's claim, noting that the CETCO invoices supplied by Naue related to sales between a Chinese exporter and an Australian importer (Volclay). While Customs and Border Protection considered the invoices provided by Naue, these invoices did not give an accurate indication of the final sales price of Chinese GCLs on the Australian market. Conversely, the invoices obtained directly from Volclay were for final sales prices of Chinese GCLs directly to the Australian market.

In addition, Customs and Border Protection notes that the invoices provided by Naue were for sales made during 2006 and 2007 (outside of the investigation period), while

those provided by Volclay were for sales within the investigation period itself. Consequently, Customs and Border Protection considered that the invoices obtained directly from Volclay, displaying their actual sales prices achieved on the Australian market during the investigation period, were of greater probative value.

#### *4: Methodology*

##### *Financial year versus calendar year*

The applicants provided the financial data required by the application in financial year format. (The application form does not prescribe the format in which the financial data must be supplied. It merely requires sufficient data to be provided to substantiate the claims made in the application. The application form states "If yearly data is provided, this would typically comprise a period of at least four years (for example the current financial year in addition to three prior years)."

The applicants provided financial data for financial years 2005/06, 2006/07 and 2007/08 with the application. As the application was lodged in November 2008, data was not available for the first half of 2008/09 at the time of lodgement. After initiation of the investigation in January 2009 Customs and Border Protection requested and was provided with financial data for this period when it became available.

Taking into account the Australian industry's claim that injury commenced from March 2008 and Customs and Border Protection's preference to use a 12 month investigation period, Customs and Border Protection notified that the investigation period would be 1 January 2008 to 31 December 2008. Customs and Border Protection requested that the applicants provide financial data in six month periods, in particular for 2007/08 to enable data for 2008 (i.e. the investigation period) to be tabulated and analysed. The Australian industry advised that it did not routinely prepare the information required by the application form on a six monthly or calendar year basis and to do so would present the companies with difficulties.

Customs and Border Protection accepted the applicants' explanation and decided to assess injury using verified financial data provided by the applicants covering the financial years 2005/06, 2006/07, 2007/08 and the first half of 2008/09.

##### *Specific projects*

The eight projects were identified for examination by Customs and Border Protection on the following basis:

- They were all awarded in 2008;
- Boddington, Cardup, WERM and Woodford Island were identified in the application as evidence of price undercutting or price depression;
- Beaudesert, Highbury and Browns Plains were selected by Customs and Border Protection for further analysis during the Australian industry verification visits;

- BP Carrington was identified by Global in a submission to Customs and Border Protection as evidence of the impact of Chinese product on the market;
- Collectively the volume of GCLs supplied to these projects represented greater than 25 percent of the estimated size of the Australian GCL market in 2008; and
- All tender documents including quotes, invoices and some market intelligence reports were available.

Customs and Border Protection noted that the Australian GCL market is driven by the commencement of projects in the landfill and mining segments of the market. Some individual projects are so large as to materially affect the size of the Australian market. Customs and Border Protection therefore considered that in its assessment of the economic condition of the Australian industry (and whether dumping has caused material injury) it was reasonable to place considerable weight on project-specific analyses, in particular the eight projects listed above.

Customs and Border Protection was aware at the time of selecting the above projects for analysis that Global had not bid for three of the related GCL supply contracts and that another had been won by Volclay. These projects were included so that Customs and Border Protection could obtain a better understanding of the Australian GCL market and how it operated. Customs and Border Protection gave both the Australian industry and Global the opportunity to nominate additional projects for analysis. Global also proposed the Merimbula and Cooks Cove Kogarah projects (for which the supply contracts remain undecided). These have been included in Customs and Border Protection's assessment of whether injury will continue.

#### *5: Claims of injury*

##### Sales volume

Customs and Border Protection agrees with Naue's claim that based on the data available there was no loss in aggregate sales volume in the investigation period when compared to previous financial years. However, as explained in this report, given that the Australian GCL market is project driven, the fact that the Australian industry has based its application on injury in relation to specific projects and the amount of detailed information available in respect of specific projects (including tender documents and sales invoices), Customs and Border Protection considers it reasonable to give considerable weight to project specific analysis. Customs has therefore based its finding of loss of sales volume on the loss of two significant GCL contracts relating to the Boddington and Cardup projects.

##### Market share

Customs and Border Protection agrees with Naue's claim that based on the data available Geofabrics did not lose market share overall in the investigation period when compared to previous financial years. Again based on its analysis of specific projects Customs and Border Protection considers that the loss of the Boddington and Cardup contracts also represents a loss in market share.

### Price undercutting

Naue claimed that Customs, in considering the question of price undercutting, failed to follow its own legal interpretation of s269TAE.

This issue has been discussed previously in this report at section 8.6.1 Naue's submission – 1. Error of law – price undercutting and price suppression injury analysis.

Naue claimed that Customs has conducted a comparison of grades which compete with each other but for which there are no actual sales and in many cases no bids to compare.

This issue has been discussed previously in this report at section 8.6.1 Naue's submission – 1. Error of law – price undercutting and price suppression injury analysis.

In regard to Naue's claims about the one project Customs found price undercutting:

- The level of price undercutting was significant. The actual level of undercutting cannot be revealed for reasons of confidentiality;
- The undercutting relates only to the grade of product originally selected by the purchaser and not the second grade supplied in significantly less volume to top up the quantity of the grade originally purchased; and
- Evidence obtained indicates that the contract was awarded to Global based on price and not any other factor.

### Price depression

Naue claimed the methodology used by Customs to make a determination of price depression is contrary to the ADA and to s.269TAE.

Customs and Border Protection disagrees with Naue's claim. Customs and Border Protection has based its finding of price depression on the observable downward trend in Geofabrics' weighted average selling prices over the injury analysis period.

### Price Suppression

Naue claimed that the finding of price suppression was contrary to a fundamental understanding of what is meant by price suppression and the methodology used is contrary to the ADA and the Customs Act.

This issue has been discussed previously in this report at section 8.6.1 Naue's submission – 1. Error of law – price undercutting and price suppression injury analysis.

### Profit and profitability

Naue claimed that Customs finding of material injury ignores that the profit and profitability of the applicants has increased substantially during the investigation

period and the proper question for Customs to consider is whether there has been a material diminution in profit in the investigation period.

This issue has been discussed previously in this report at section 8.6.1 Naue's submission – 1. Error of law – ministerial determination on material injury.

#### Other economic factors

Naue is once again critical of the weight given by Customs to return on investment. As previously explained in the SEF, Customs and Border Protection has considered return on investment, as well as the other economic factors, when examining the economic condition of the industry. Customs and Border Protection has not given return on investment any more weight than the other economic factors and has accorded all other economic factors commensurate weight in the overall analysis.

#### **8.6.2 European Commission's submission**

The European Commission claimed that the Australian industry was not suffering from any material injury particularly in regard to:

- Sales volume
- Market shares
- Price undercutting
- Price suppression

This issue has been discussed previously in this report at section 8.6.1 Naue's submission – 5. claims of injury.

#### **8.7 Conclusion - economic condition of the industry**

Having regard to all of the above, 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.

## 9 HAS DUMPING CAUSED MATERIAL INJURY?

This section considers whether the dumping has caused material injury to the Australian industry. It also considers whether injury was caused by other factors, as such injury must not be attributed to the dumping.

Customs and Border Protection's determination of causation is based on an examination of both the volume of the dumped goods and the effect of those imports on the prices in the domestic GCL market and the consequent impact on the Australian industry.

### 9.1 Australian industry's claims

The applicants identified the following specific projects as evidence that dumped imports of GCLs from Germany caused material injury to the Australian industry in 2008:

	Project	State	Year	Won/lost	Injury claims
1	Cardup	WA	2008	lost	Price undercutting, Lost sales volume, lost market share, reduced profits
2	Boddington	WA	2008	lost	Price undercutting, Lost sales volume, lost market share, reduced profits
3	Woodford Is	NSW	2008	won	Price depression; price suppression, reduced profits
4	WERM	SA	2008	won	Price depression; price suppression, reduced profits

#### Lost volume

The applicants claimed that:

- the emergence of dumped German imports in 2008 has had a negative impact on Geofabrics' sales and pricing. Dumped German imports have displaced Geofabrics' product at two projects in Western Australia.
  - o The two lost projects account for approximately 3.5 percent of the 2007/08 Australian market for GCLs.
  - o The volume associated with these contracts together with an estimate of other imports of German GCLs have captured a minimum of eight percent of total import volume;
- Global is targeting the higher volume contracts to which Geofabrics supplies its two major grades of GCL (X1000 and X2000). German imports are likely to extend beyond these grades as further volumes are secured.

#### Reduced pricing

The applicants claimed that:

- In respect to the two lost Western Australian contracts, despite a 21 percent price reduction at the first contract, Geofabrics failed to secure the contracts against the successful tender prices of Global;
- In June 2008 the applicant was forced to reduce its price for two grades of GCL to secure a contract at Woodford Island in response to “aggressive” promotion by Global; and
- Geofabrics understands that in August 2008, it was awarded the WERM landfill contract against Global having once again been forced to reduce its price in response to pricing by Global.

### Reduced profits and profitability

The applicant claimed that the decline in domestic sales volumes (evidenced at the Cardup and Boddington projects); combined with its inability to raise prices to recover increased costs (as evidenced at the Woodford Island and WERM projects) have resulted in reduced profits and profitability in 2007/08.

#### **9.1.1 Identification of specific projects**

During the Australian industry verification visit other specific projects decided in 2008 were identified by Customs and Border Protection for analysis. These projects are listed below.

	Project	State	Won/lost	Injury claims
5	Beaudesert	QLD	won	Price depression, price suppression
6	Highbury	SA	won	Price depression, price suppression
7	Browns Plains	QLD	won	Price depression, price suppression

The following eighth project also decided in 2008 was identified by Global for analysis in a submission to Customs and Border Protection and raised again at the importer verification visit.

	Project	State	Won/lost	Injury claims
8	BP Carrington	NSW	lost	No injury claims made by applicant: contract lost to Chinese imported product

In addition to the above eight projects, the applicants and the importer identified five other projects that were either awarded in 2009 or are undecided. These projects which are listed below were not taken into consideration by Customs and Border Protection in assessing whether dumping has caused material injury. These projects have, however, been taken into account in the next section of this report when considering whether dumping and material injury will continue.

	Project	State	Won/ lost	Injury claims
1	Cobram	VIC	won	Price depression; price suppression, reduced profits
2	Red Hill Waste Management facility (Red Hill)	WA	lost	Price undercutting, Lost sales volume, lost market share
3	Millar Road landfill facility (Millar Road)	WA	won	Price depression; price suppression
4	Merimbula STP Ponds	NSW	Undecided	
5	Cooks Cove Kogarah landfill	NSW	undecided	

A summary of the above 13 specific projects analysed by Customs and Border Protection forms Confidential Attachment 5.

## 9.2 Exporter's claims

Naue claimed that there is no probative evidence that the applicants have been materially injured by GCLs imported from Germany or that there is any causal link between any injury suffered by the Australian industry and the sale of German GCLs on the Australian market.

Naue further considered that there is negligible or no injury suffered by the applicants and that Customs and Border Protection should have promptly terminated the investigation, pursuant to subsection 269TDA(13). Naue provided the following reasons for its position:

- there is no basis for a claim of loss of any market share to the applicants. Chinese GCLs comprise about 18 percent of the market and are sold at a non-dumped price. The applicants alleged that the market share of German GCLs is around 3.5 percent. It would therefore be expected that the price setters in the market would be the applicants' and Chinese products. German GCLs with its insignificant market share could not be seen as a price leader in the market;
- price was not a determinative issue in at least two of the projects relied upon by the applicants. Global did not, in relation to the Cardup contract, undercut the price of the applicants' product based on the applicants' prices in the eastern states of Australia. Global considers the Boddington contract was not won on price alone;
- if price depression has been suffered by the applicants, the cause has not been from imported German GCL but from other sources, which would have to be Chinese product;
- having regard to the investigation period and beyond it, there is no price suppression. Price suppression does not consider the question of prices decreasing, that is price depression, but whether prices should have increased to recover increases in costs. In this case, although prices have decreased it is clear that they did not need to increase to recover costs;

- both the profit and profitability of the Australian industry show an actual increase during the investigation period;
- material injury cannot be found by having regard to the other economic factors listed in the Australian industry visit report;
- the strength of the Australian dollar, which effectively reduced the price of the German GCLs between March and September 2008 by up to 30 per cent, should be taken into account;
- Naue initially claimed it had no difficulty in Customs and Border Protection using the Geofabrics' weighted average selling price in the second half of 2007 as the unsuppressed selling price. (Naue altered its position in this regard which is discussed later in this report.) Naue considers that the price at which Global sold German GCLs in 2008 was above this price and above the price of Chinese GCLs;
- Customs and Border Protection's approach is erroneous and affects the results and any consideration of material injury and causal link must be confined to the period after March 2008;
- Customs and Border Protection's methodology and the weight it has given to projects is also erroneous; and
- the injury period must include the end of the investigation period in order to come to a view on causal link. If the analysis was conducted based on the whole of the investigation period, this would show no injury or an improvement in the second half of the investigation period.

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

#### **9.3.1 Volume of dumped goods**

##### **Dumping Margin**

Customs and Border Protection found that in the investigation period the goods were exported by Naue, from Germany to Australia, at dumped prices and the weighted average dumping margin was 26.7 percent. Customs and Border Protection considers that the volume of GCLs exported to Australia by Naue in the investigation period at dumped prices was not negligible.

##### **Volume effects**

Global, the importer and distributor of GCLs from Germany, commenced selling dumped exports from Germany in the Australian market in 2008.

Global continued to bid on a number of contracts for supply of GCLs and made a number of sales during 2008. Customs and Border Protection estimated that Global captured approximately 5 percent of the Australian market in the investigation period.

Customs and Border Protection considered:

- the magnitude of the dumping margin was such that Global was able to offer competitive prices in the Australian market in 2008;

- all other things being equal, if the export prices were not dumped, Global would have been significantly less competitive in the Australian GCL market in the investigation period; and
- it is likely that Geofabrics would have won the GCL supply contracts for Boddington and Cardup had Global been unable to secure GCLs from Germany at dumped prices.

Therefore, Customs and Border Protection considered the volume effect of the GCLs exported from Germany at dumped prices was reflected in, at least, the loss of sales volume associated with the Boddington and Cardup projects, and the related loss of market share.

### **9.3.2 Price effects**

Customs and Border Protection examined the effect of the dumped imports of GCLs from Germany on prices in the Australian market by conducting price comparisons of Geofabrics' GCLs and the German GCLs sold by Global at an aggregate level and on a project-specific basis. The results of both approaches are explained below.

#### **Aggregate level**

The applicants claimed that they began suffering injury from dumped German imports from March 2008. Customs and Border Protection therefore assumed for the purposes of injury analysis that the Australian market was unaffected by dumped imports in 2007.

Customs and Border Protection has used sales data provided by the applicants for the second half of 2007, a recent period unaffected by dumped German product, as the benchmark for certain comparative pricing analyses.

Global claimed that selling prices into the Western Australian market should be differentiated from selling prices into markets in the eastern states as:

- Elco's manufacturing facility is located in Queensland and therefore inland freight is a significant factor for Geofabrics selling into the Western Australian market. In addition, Geofabrics faced limited competition in the Western Australian market from imported product prior to the commencement of Global's operation, therefore prices tended to be higher than prices in markets in the eastern states where Geofabrics has been competing with imported product for about 10 years; and
- it has, since entering the market in 2008, been able to provide competition to the applicants nationally and within the Western Australian market by being able to offer "traditional price levels" to the Western Australian market that were previously offered exclusively to the markets in the eastern states where competition existed.

Therefore, when examining the price effects of dumped GCLs from Germany, Customs and Border Protection has taken into account the regional markets in which they were sold, but also had regard to the relationship of those prices with Geofabrics' national weighted average prices.

Customs and Border Protection compared Global's weighted average selling prices in 2008 with Geofabrics' weighted average selling prices in the second half of 2007. In relation to the six possible comparisons shown in the table in the price undercutting section of this report, Customs and Border Protection found the weighted average Global prices for 2008 were lower than the national weighted average Geofabrics prices in the second half of 2007 in three instances.

A similar comparison was conducted for weighted average Global prices for 2008 and Geofabrics weighted average prices for Western Australia in the second half of 2007 where there were four instances of the Global price being lower.

### **Project-specific prices**

Customs and Border Protection noted in responses to questionnaires sent to purchasers of GCLs that price and specification of the grade quoted were considered to be the most important considerations. In one case, the purchaser stated that it had issued a purchase order to the supplier with the lowest price.

Customs and Border Protection found it was not uncommon for one GCL supplier to be aware of the price of its competitor, either specifically in relation to a particular project, or in terms of a general awareness of its competitor's historical prices. At times the understanding of prices by competitors at particular projects was very accurate, but at other times a competitor's understanding of another's historical or average prices was not accurate.

Customs and Border Protection examined the details of the eight identified projects awarded in 2008 (Confidential Attachment 9 refers). The results of the analysis are summarised below:

- Global's price bids undercut Geofabrics price bids at one project;
- in all projects where Global provided a quote, its price was lower than the Geofabrics price (national weighted average) for the second half of 2007, for at least one comparable Australian grade of GCL;
- there was evidence that Geofabrics was the only GCL supplier to bid for two of the projects. Nevertheless, Geofabrics selling prices at both projects were lower than its national weighted average prices for the second half of 2007; and
- Chinese suppliers bid for four of the projects. Volclay was successful at one of the projects. Customs and Border Protection has evidence the contract was awarded on price and the size of the rolls supplied.

Customs and Border Protection considered it significant that the evidence shows, in relation to the projects examined in 2008 where Global submitted a bid, in all cases Global prices were lower than Geofabrics' weighted average price in the second half of 2007 for at least one of the potentially comparable Australian grades of GCL.

Customs and Border Protection considered this to be significant because Naue initially agreed that Geofabrics prices in the second half of 2007 were a suitable basis for establishing unsuppressed selling prices (discussed later in this report). At the same time, Naue claimed that Global sold its product into the Australian market during the investigation period at prices above the unsuppressed selling price of the Australian industry. The evidence shows this was often not the case.

Given the pricing comparisons conducted in relation to weighted averages at the aggregate level, and to the project-specific comparisons, Customs and Border Protection considered it was reasonable for Geofabrics to have regarded Global as highly competitive on price, and prepared to sell at prices below the prevailing market price.

Customs and Border Protection also considered the pricing behaviour of Geofabrics indicated that it responded to the Global competition by reducing its prices, resulting in significant price depression and price suppression. Geofabrics stated that it did not want to lose further contracts and it priced future tender bids according to what it understood Global's competitive offers would be. Noting the degree of price transparency in the market was variable, Customs and Border Protection considered it would be difficult to categorise the price response by Geofabrics as an overreaction.

Customs and Border Protection noted Naue's claim that price suppression does not consider the question of prices decreasing, that is price depression, but whether prices should have increased to recover increases in costs. While the latter consideration is relevant and has been taken into account, Customs and Border Protection also considered whether price increases, which otherwise would have occurred, have been prevented. Customs and Border Protection noted that the Australian industry was unable, after March 2008, to achieve the market prices that prevailed before German GCLs entered the market. This was true of selling prices for the GCL supply at particular projects won after March 2008 and of the weighted average selling price in the first half of 2008/09.

### **9.3.3 Impact of dumped imports on the Australian industry**

Based on information obtained and verified during the investigation, Customs and Border Protection considered that:

- GCLs were exported from Germany to Australia in 2008 at dumped export prices, in volumes that were not negligible, and the margin of dumping was 26.7 per cent;
- the magnitude of the dumping margin was a significant factor in enabling Global to undercut the price of the Australian industry at one contract, and in enabling Global to be competitive on the Australian market;
- the competitive prices for GCLs sold by Global caused the loss of sales volume (in relation to Cardup and Boddington Projects) for the Australian industry and the associated loss in market share;
- the presence of competitive pricing from German GCLs, and the knowledge of lost contracts at Boddington and Cardup, caused Geofabrics to reduce quoted prices in bidding for contracts in 2008 resulting in significant price depression and price suppression; and
- notwithstanding increased sales volumes overall in 2008, the loss of the Boddington and Cardup projects, together with significant price depression and price suppression caused the Australian industry's profits and profitability to be lower than they would have been without dumping.

## 9.4 Other possible causes of injury

Customs and Border Protection considers the influence of other factors when assessing whether the pressure of dumped imports in the market has caused injury to the Australian industry.

### Export performance of the Australian industry

Naue claimed that the applicants acknowledged that its export performance has suffered a downturn.

Customs and Border Protection verified financial data for the applicants, which included costs and prices related to export sales of GCLs. Customs and Border Protection was careful to ensure export data was not included in any part of its assessments of the condition of the Australian industry. Accordingly, Customs and Border Protection does not consider that any injury attributed to dumping has resulted from the Australian industry's export performance.

### Chinese imports

The applicants claimed that Chinese imports have been sold in the Australian market since 2004/05 at pricing levels similar to those offered by Geofabrics. The applicants claimed that 'a significant proportion of imported Chinese GCLs are sold in the building and construction industry as basement liners'.

Naue claimed that Chinese GCLs have always had a significant market share throughout the injury analysis period of around 18 percent and that Chinese imports compete in the same market segments as the applicants' products for around the same price. Naue states that careful regard would need to be had to the impact of Chinese competition in the marketplace.

Global maintains that it has not sold its product below that of Chinese prices and it stated that it cannot compete with the prices of the Chinese product nor can it compete with Geofabrics' prices on the east coast of Australia.

Customs and Border Protection understands that CETCO manufactures the GCLs that are marketed in Australia under the Bentomat® and Voltex® product names by Volclay and marketed under the Bentoliner® product name by Polyfabrics.

Customs and Border Protection attempted to obtain import and sales information from Volclay and Polyfabrics for the injury analysis period. Polyfabrics advised that Volclay was the importer of the Chinese GCLs and offered no further information relating to the investigation.

Volclay provided Customs and Border Protection with limited cooperation and did not provide a written submission. However, at the request of Customs and Border Protection, Volclay provided copies of six invoices for sales of GCLs in Australia in 2008. These invoices included information in relation to GCL sales to one of the projects examined specifically for the investigation period. Customs and Border Protection also obtained the following additional information relating to Chinese product:

- information on the involvement of Chinese product in the projects examined specifically contained in responses to the purchaser questionnaire;
- information on the involvement of Chinese product in the projects examined specifically contained in intelligence reports;
- sales invoices from a Chinese manufacturer to Volclay provided by Naue; and
- a 2007 tax invoice from a supplier of Chinese GCLs in Australia and an email document quoting Chinese export prices from Nanjing, China provided by Global.

A summary of Volclay's sales information forms Confidential Attachment 10.

Customs and Border Protection examined all of the information available in relation to selling prices in Australia for Chinese GCLs and considered that:

- Chinese GCLs and Australian GCLs compete in all segments of the market;
- prices for Chinese GCLs were quoted for four out of the eight projects examined;
  - o Global won the first project in preference to Australian and Chinese product;
  - o Geofabrics won the second contract and was aware it was bidding against Chinese and German product;
  - o Geofabrics won the third contract and was aware it was bidding against German and Chinese product; and
  - o Chinese GCLs were purchased in preference to Australian and German GCLs in the fourth project. The purchasing decision was based on price and the size of the rolls supplied.

Customs and Border Protection noted that:

- Chinese GCLs have been sold in Australia at prices similar to, above, and below, the average Australian industry prices in 2007 and 2008. The information obtained by Customs and Border Protection on Chinese product relates to a number of different grades of GCL and the price varies according to grade; and
- Chinese GCLs have competed in four out of the eight specific projects analysed; and
- Chinese GCLs have been purchased in preference to Australian and German GCLs for one project, but the size of the GCL rolls was also an important consideration at this project.

Customs and Border Protection considered:

- it significant that the Australian industry selling prices in the second half of 2007 were achieved in a market where it was in competition with Chinese

GCLs, which held a significant market share. Indeed, it was these prices that Customs and Border Protection foreshadowed as a potentially suitable basis for an unsuppressed selling price – an approach that initially drew support from Naue;

- it significant that only after the entry to the Australian market of dumped GCLs from Germany did the Australian industry lower its prices significantly, resulting in price depression and price suppression. There was no significant change in the market in 2008 other than the emergence of German GCLs at dumped prices;
- there is evidence that the Chinese and Australian GCLs have co-existed in the market at prices that are now being driven down by competition with the German GCLs. While Customs and Border Protection acknowledges that competition between the supplier of Chinese GCLs and the Australian GCL industry may have resulted in price pressure and lost sales from time to time, the fact remains that weighted average prices achieved by the Australian industry, when in competition with the Chinese GCLs, were not being achieved after the emergence on the market of the dumped GCLs from Germany.

Naue claimed that Customs and Border Protection has failed to properly consider the question of non-attribution in relation to distinguishing the effect of the non-dumped Chinese product from that of the imported German product.

Customs and Border Protection rejected this assertion and considered it has been able to do so because it has observed circumstances where there has been a long-term co-existence in the Australian market for two competing GCL sources (Chinese and Australian GCLs).

Naue acknowledges that:

*“...Volclay/Polyfabrics were significant competitors and that Chinese GCL compete with the applicant’s products on all markets and at similar price levels. Those similar pricing levels were due to the effect of the competition between the applicant’s product and the Chinese imports, long before the entrance of the German imported GCL onto the market”.<sup>3</sup>*

Customs and Border Protection considered the only significant change to that market was the entry of a third source - German GCLs at dumped prices. The adverse effect on the Australian industry GCL prices since the market entry of German GCLs has been observed.

Customs and Border Protection considered that the market circumstances provide considerable assistance in discerning the impact on the Australian GCL industry of competition with dumped German GCLs. Customs and Border Protection considers that these circumstances, and the analysis of price competition within the 2008 market, contribute to its ability to isolate the injury caused by dumped German GCLs. Similarly, Customs and Border Protection considers it has been able to ensure any

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<sup>3</sup> Naue submission of 20 April 2009, p. 2.

effects on the Australian industry from competition with the Chinese GCLs have not been attributed to dumping.

### **Product Specifications**

Naue claimed that the Cardup project was won on factors other than price and, in particular, on specifications, as specific grades of GCLs were explicitly specified by the consultant in the final tender documents as the GCLs to be supplied for the project. Naue also claimed that the Boddington project was won (without price undercutting) because of factors other than price, namely that the total package offered by Global presented better value.

Customs and Border Protection analysed all information gathered during the investigation in relation to the Boddington and Cardup projects.

In relation to Boddington, Customs and Border Protection disagrees with Naue's submission, as the available evidence clearly demonstrates that Global prices undercut the prices of Geofabrics.

Regarding the Cardup project, Customs and Border Protection's analysis of the project tendering process for Cardup has indicated that, in the early stages of the project, price negotiations were very important prior to the final tender document being set. These price negotiations impacted on which GCLs were progressed to product testing and were set in the final specifications.

The detailed analysis of evidence relating to Cardup is Confidential Attachment 8.

Customs and Border Protection therefore considered that product specifications were not the only reason, nor were they the most important reason, for Global being awarded the Boddington and Cardup Projects.

### **Currency fluctuations**

Customs and Border Protection notes there was a considerable depreciation of the Australian dollar against the Euro after August 2008. One Australian dollar fell from approximately 0.60 to 0.50 Euro over the period from August to December 2008. However, given that all GCLs that were exported by Naue in 2008 were before August 2008, Customs and Border Protection does not consider the currency fluctuations impact on its finding that dumping caused material injury to the Australian GCL industry in 2008.

Customs and Border Protection examines the issue of currency fluctuation again in the Section 10 below.

### **Expiration of patent**

Naue claims that the fact that the patent for the Bentofix® product expired in early 2008 had the result that the price of GCLs in Australia declined.

Customs and Border Protection found no evidence that the expiration of Naue's patent on the manufacture of GCLs had any affect on the selling price of GCLs on the Australian market.

## 9.5 Responses to the SEF

### 9.5.1 Geofabrics

Geofabrics submitted that Customs and Border Protection's assessment in the SEF that, had Naue's export prices not been dumped, the importer would have been significantly less competitive in the Australian GCL market in the investigation period accurately reflects the basis for Geofabrics' application. Further, Customs and Border Protection's assessment that the Australian industry's selling prices, and those of imported Chinese GCLs, were at comparable levels in 2007 and the emergence of Naue's exports in 2008 at dumped prices, which was the catalyst to significant price depression, further supports the finding there exists a strong causal link.

### 9.5.2 Naue

Naue submitted in regard to causality that:

#### 1. Concept of competitive

- The concept of "competitive" as used by Customs in its SEF is not recognised as an indicator of injury either under the ADA or s269TAE. The test is not whether a party is more competitive but if the price of the goods has led to price undercutting, price depression or price suppression.

#### 2. Behaviour of Geofabrics

- The behaviour of Geofabrics in lowering prices in 2008, to a point lower than what it was charging in 2007, cannot be attributed to Naue. Naue considers that the evidence supports a finding that Geofabrics overreacted in lowering prices to the point that it did and acted in reliance on its own flawed perceptions of the market for GCL in Western Australia.
- Out of the eight cases Customs examined, it found only one example of price undercutting. Of the eight contracts, Global and Volclay won one contract each and Geofabrics won the remaining six contracts. It is apparent that Geofabrics lowered its prices in cases where Global was not even the bidder – a fact which supports Naue's assertion that Geofabrics relied on its own flawed perceptions of the market; and
- The applicants argued in their application that the market was transparent. Geofabrics confirmed this in its most recent statement that it acted in reliance of its own understanding of Global's tender offers in lowering its prices, not on the suppliers' perception. Geofabrics adjusted its prices in reliance on its own flawed market intelligence. Global cannot be held responsible for the consequences which flow from this.

#### 3. Price comparisons

- The SEF should set out in a table the various projects and against those for which Geofabrics was the only bidder, those in which Global bid and

those in which Geofabrics and Global won and lost; no basis is provided for the selection of the projects;

- Reference is made to the prices obtained by Geofabrics in 2007 and to contrasting those with the prices it obtained in respect of the selected projects where it was successful and further comment is made in relation to Global's claim that its quotes were often not higher than the unsuppressed selling price. Again Customs confuses the application of the unsuppressed selling price;
- The comment made by Customs that its prices were lower than Geofabrics' weighted average price bid in the second half of 2007 for at least one of the potentially comparable grades of GCL is confusing and again the reference to potentially comparable indicates that what is being considered is hypothetical transactions. The reference to often is not given any precise meaning. Naue is still unclear about what is being compared and whether it is the same grade or grades or whether several grades are being offered;
- The conclusion that Customs comes to that Geofabrics was entitled to treat Global as being highly competitive and respond accordingly by selling at below market prices is simply not supported by the projects referred to;
- Reference is made to comparing Global prices with the national weighted average prices. Global has made two sales in the investigation period and it would appear that Customs has used these two actual sales for the purposes of comparison with a weighted average national sales. Naue requests that this point be clarified in the final report. Naue also requests that for the purpose of comparisons, Customs give particular regard to the grade of products on which those averages are based, differences in terms and circumstances of sale, differences in timing of sales and critically differences in freight costs to ensure that the comparison is fair;
- Customs stated that it compared Global weighted average selling prices in 2008 with Geofabrics weighted average selling prices in the second half of 2007. Naue argues that such an analysis is inconsistent as it involves a comparison of one year with another year; and
- Customs is not entitled to state a finding that based on six comparisons of comparable grades, Global prices were lower than the weighted average prices of Geofabrics. If, as Customs claims, the analysis was not done to determine price undercutting, then Naue would ask why was it included in the analysis of price undercutting. If it somehow supports the finding of price undercutting, then Naue submits that it is entirely inappropriate either on the basis that such analysis does not support such a finding, or its inclusion is simply an attempt to give improper weight to such a finding, and as such is a simply case of bias against Naue.

#### 4. Regional market differences

- Global claimed that there were differences between the eastern market where Elco Solutions' factory is located and the western market, the only market in which Global had achieved any sales. Customs simply referred to regional market differences as claims made by Global, and either did not investigate these matters or, if it did, has simply refused to come to any view on whether market differences exist. Customs stated in the SEF that it had regard to, and gave greater weight to, the relationship of those prices with Geofabrics' national weighted average price. As such, Customs effectively and for all practical purposes disregarded a separate analysis of the western market.

#### 5. Price Underselling

- Customs has used the same methodology to determine price undercutting as is used to determine price underselling. The methodology used by the EC in this respect is only used to determine the application of the lesser duty rule. Price underselling is not used as an indicator of material injury. Naue questions the appropriateness of this methodology being applied outside the context of the lesser duty rule.

#### 6. Claims of injury caused by dumped German imports:

##### Price depression

- Geofabrics has put forward five contracts to support its claim of price depression – three are not relevant on the facts, in one of the remaining two the applicants admitted they were not competing against Global but another competitor. There is no acknowledgement of this by Customs. There is a general reference to project specific prices however there is no specific reference to price depression nor a separation out in those projects of those for which price undercutting, price depression or price suppression was relevant.

##### Price suppression

- The SEF does not set out the applicants' claims in relation to price suppression even though the inability to raise prices to recover cost increases, especially in relation to the X1000 grade product is claimed to be one of the major causes of injury;
- It is clear from the evidence that CTMS was coming down substantially. Customs describes price suppression in the draft Dumping Manual as "the inability to adjust prices in line with movements in costs". Customs appears to have abandoned any attempt to link price suppression with the question of increased costs contrary to the definition in the Dumping Manual; and
- In considering price suppression particular methodology is applied. The relationship between price and CTMS is examined to confirm that there is a link between costs and prices. Only then can the investigation period be examined to see if the relationship between price and costs is the same or

is different and to draw conclusions on the influence of prices and costs and the impact of dumped goods. The weight of evidence clearly shows that there was in fact no reason for any price increase based on cost. It is clear that the applicants overreacted and dropped prices even when there were no quotes supplied by Global. The applicants' behaviour in lowering prices cannot be used as evidence of price suppression for the projects or for the market as a whole.

#### Price Undercutting

- There is no dumping administration that would support the approach taken by Customs in this case whereby price undercutting analysis has been conducted based on no actual sales, possible comparisons and no comparison between sales made within the investigation period. Customs noted that it has used sales data provided by the applicants in the second half of 2007 as a benchmark for certain comparative pricing analysis. Naue requests that the final report describe what comparative analysis was in fact undertaken.

#### 7. Other possible causes of injury

##### Export performance:

- Customs has not determined whether there was any injury to the applicants caused by export performance or if it was significant.

##### Chinese imports:

- By failing to give adequate consideration to the price and volume effects of Chinese imports on the applicants, Customs has not given due consideration to factors other than the effect of dumped imports in considering whether or not material injury exists and is therefore not in a position on this ground alone to have made any finding that dumped imports caused material injury to the applicants;
- Customs has not delivered on the undertaking that it would consider the impact of Chinese GCL on market prices (volume and sales) to ensure that injury to the applicants if any, arising from competition with Chinese imports is not attributed to alleged dumped GCLs from Germany;
- The statement by Customs about the Global sales record not supporting the claim made by Global in respect of not being able to compete with Chinese product, or Geofabrics' east coast prices is an unsubstantiated allegation made by Customs to which it has provided no factual support;
- Customs has ignored direct comparison between prices and stated that it has compared actual Chinese prices with average Australian prices in 2007 and 2008. This comparison is flawed as it does not compare like with like i.e. the average Chinese price with the average Australian price. Further there is no indication that Customs is comparing the same grade with the same grade;

- No indication is given in relation to the one project that Volclay won and whether it was in fact won on price. This project must be considered in coming to any conclusion on lost market share and attribution of injury; and
- Customs has made a generalised observation about the size of rolls being a consideration in a bid where Volclay was the successful party. This comment which is not supported by any evidence is put in to try and weaken the fact that Volclay was successful on price, meaning it undercut the price of Geofabrics and Global.

Product specification:

- Customs and Border Protection found evidence of price undercutting for one contract, but none for the other contract won by Naue. These were the only two contracts the subject of complaint by the applicants and Customs characterised both contracts as being lost to the applicants on the basis that the dumped imports made Global more competitive and that the contract was won on price not product specification; and
- The finding that price was the determinative factor in the award of contracts was contrary to the evidence in this case and was made against Customs own finding in its responses to a Purchaser Questionnaire. The overwhelming response was that product specification was the first consideration for purchasers and prices the second consideration. This finding was ignored by Customs which in essence gave equal weight to price and product specifications.

### **9.5.3 European Commission**

The European Commission submitted:

1. Specific projects

- The Commission considers that the analysis was not based on a sufficient number of objectively selected projects;
- Although the SEF mentions that the most important element for the winning/losing of a tender was price, it does not provide a detailed analysis of any other elements such as quality, technical specifications, transport costs, or the timeframe of delivery of the competing products.

2. Other possible causes of injury

Chinese imports:

- The impact of Chinese imports has not been analysed; and
- The undercutting analysis revealed undercutting by Chinese imports in as many instances as by German imports i.e. one instance each.

### Fluctuations in domestic demand

- The impact of fluctuations in domestic demand has not been analysed.

## **9.6 Customs and Border Protection's assessment of submissions by Naue and the European Commission in response to the SEF**

### **9.6.1 Naue's Submission**

#### *1. Concept of competitive*

Naue claimed that the concept of 'competitive' as used by Customs is not recognised as an indicator of injury either in the ADA or s269TAE.

Customs and Border Protection has used the word "competitive" within the context of its ordinary meaning<sup>4</sup> and does not consider it has intentionally or inadvertently introduced a new test of injury or causation. Rather, Customs and Border Protection goes on to show how competitive prices, made possible by the goods being exported with a dumping margin of 26.7 percent, resulted in price undercutting, and significant price depression and price suppression.

#### *2. Behaviour of Geofabrics*

Naue claimed that the behaviour of Geofabrics in lowering prices in 2008 to a point lower than what it was charging in 2007 cannot be attributed to Naue.

Customs and Border Protection consider that Geofabrics did not overreact in lowering its prices in response to its own flawed perceptions of the GCL market.

Customs and Border Protection understand that the tendering process for large GCL supply contracts are long and usually require several stages in the process before the contract is awarded. It is common for contractors/ sub-contractors to seek quotes from GCL suppliers before tendering for projects. GCL suppliers may submit quotes to a number of different contractors/ sub-contractors tendering for projects. GCL suppliers may therefore be aware they are bidding against other suppliers with some contractors/ sub-contractors but not others. It is therefore reasonable to expect price transparency in relation to specific projects to be variable and for Geofabrics to provide competitive quotes to all contractor/ sub-contractors tendering for the specific project particularly in light of a new and significant supplier of dumped GCLs from Germany.

#### *3. Price comparisons*

Naue claimed that Customs should set out in a table details of the specific projects analysed.

Customs and Border Protection has included a table which lists the eight specific projects involving GCL supplies in 2008 which it analysed when considering the

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<sup>4</sup> The Macquarie Dictionary defines competitive as "relating to, involving or decided by competition"

economic condition of the Australian industry in section 8.2 of this report. The additional details requested by Naue to be included in the table are considered confidential. A table with this information has been included in this report at Confidential Attachment 5.

Naue claimed that the basis of the price comparisons is unclear.

Customs and Border Protection considers that a comparison of Geofabrics actual selling prices it obtained in relation to specific projects involving GCL supply in 2008 with actual selling prices obtained by Geofabrics in the second half of 2007, a period considered to be unaffected by dumping, is a reasonable test of price depression/suppression caused by dumping. Further Customs and Border Protection's comparison of Global's weighted average selling prices in 2008 with Geofabrics' weighted average selling prices in the second half of 2007 is a reasonable test of the effect Global's prices was having on the GCL market in the investigation period. Customs and Border Protection does not agree with Naue that it is confusing the application of the unsuppressed selling price which is based on the most recent period unaffected by dumping which happens to be the second half of 2007.

Customs and Border Protection conducted a comparative pricing analysis as a means of comparing Global's weighted average selling prices of the three imported grades of German GCL with sales of comparable grades of locally manufactured GCL. Customs and Border Protection in making this comparison decided to match the imported grades with the locally manufactured grades that they competed against in actual sales in 2008. This matching process resulted in six comparisons of grades. Customs and Border Protection considered this to be the best method of comparing actual prices at an aggregate level for the purpose of examining the price effects of the dumped German product given that the specifications for grades of German imported product and grades of locally manufactured product are different.

Naue claims that Global has made two sales in the investigation period and it would appear that Customs has used these two actual sales for price comparisons.

Customs and Border Protection has evidence of all Global's sales of GCLs during the investigation period, which were greater than just the two sales as submitted by Naue. Customs and Border Protection's calculation of Global's weighted average prices for each grade imported is based on all these sales.

Naue argues that a comparison of Global's prices in 2008 with Geofabrics' prices in the second half of 2007 is inconsistent as it involves a comparison of one year with another.

Customs and Border Protection does not consider such a comparison to be inconsistent. In fact, Customs and Border Protection considers that such a comparison is a reasonable test of the price effect of the dumped German imports by comparing the price of the German imports to the price achieved by the Australian product at a time unaffected by dumping. In addition, price comparisons between years is the usual way of examining price effects of dumped imports on the Australian market.

Naue argues that Customs is not entitled to state a finding that based on six comparisons of comparable grade Global prices were lower than Geofabrics'.

Customs and Border Protection refutes the claim made by Naue. As stated previously Customs' finding of price undercutting related to actual prices both at a specific project level and at an aggregate level which was tested using a comparative pricing analysis.

#### *4. Regional market differences*

Naue claimed that Customs did not investigate or refused to come to any view on whether differences exist between the eastern and western markets.

As previously stated in this report, Customs and Border Protection considered regional market differences when undertaking a price comparative analysis. Customs and Border Protection found that Geofabrics' weighted average price in the Western Australian market was higher than its national weighted average price in 2008. Therefore price comparison analysis, if based only on Geofabrics prices in Western Australia, would only have generated greater differences when compared to Global's prices.

#### *5. Price underselling*

Naue claimed that Customs has used the same methodology to determine price undercutting as is used to determine price underselling which is not used by the EC as an indicator of material injury. Naue questioned the appropriateness of this methodology.

While Customs and Border Protection did not in the SEF use the expression "price underselling" it is fair to say that a comparison of Global's selling prices in Australia in the investigation period to weighted average Geofabrics' prices in the second half of 2007 (a period considered to be unaffected by dumping and therefore a possible basis for unsuppressed selling price) could be regarded as a price underselling analysis. However, this does not disqualify it from being relevant to an assessment of whether dumping has caused material injury. On the contrary, Customs and Border Protection considers it completely reasonable to examine the relativities of the selling prices in Australia of dumped goods and prices that the Australian industry could reasonably be expected to have achieved in a market unaffected by dumping. Furthermore, Customs notes that the assessment of the effect of dumped imports on prices on the European Community's market by applying the price underselling methodology is an acceptable approach<sup>5</sup>.

#### *6. Claims of injury caused by dumped German imports*

##### *Price depression*

Naue claimed that Customs has made no specific reference to price depression nor a separation out for whether price undercutting, price depression or price suppression

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<sup>5</sup> "EC Anti-Dumping Law – A commentary on Regulation 384/96", Muller, W., Khan, N., Neumann, H., John Wiley & Sons, 1998, p. 201

was relevant for the five contracts put forward by Geofabrics to support its claim of price depression. Naue claimed Customs has not acknowledged that three of the projects are not relevant on the facts and in one of the remaining two Geofabrics admitted it was not competing with Global.

As explained earlier in this report at section 8.3.1, Customs and Border Protection considered the selling prices achieved by Geofabrics in relation to specific projects as well as at an aggregate level in finding that dumped imports from Germany had caused price depression at both levels.

As stated in Section 8.3 of this report, Customs and Border Protection compared selling prices achieved by Geofabrics at all five projects to its national weighted average price and found the price at all projects to be lower than the weighted average price in the corresponding and previous financial years.

#### Price suppression

Naue claimed that Customs appears to have abandoned any attempt to link price suppression with the question of increased costs contrary to the definition in the draft Dumping Manual.

This issue has been discussed previously in this report at section 8.6.1 Naue's submission – 1. Error of law – price undercutting and price suppression injury analysis.

#### Price undercutting

Naue claims that Customs approach in determining price undercutting based on no actual sales, possible comparisons and no comparisons between sales made in the investigation period would not be supported by any dumping administration.

This issue has been discussed previously in this report at section 8.6.1 Naue's submission – 1. Error of law – price undercutting and price suppression injury analysis.

### *7. Other possible causes of injury*

#### Export performance

Naue claimed that Customs has not determined whether there was any injury to the applicants caused by export performance or if it was significant.

Customs and Border Protection explained in this report that it was careful to exclude the impact of Geofabrics' export performance from its analysis of the economic condition of the Australian industry. All data analysed relates solely to Geofabrics' domestic sales.

#### Chinese imports

Naue claimed that Customs has failed to give adequate consideration to the price and volume effects of Chinese imports on the applicants.

Customs and Border Protection refutes Naue's claims that Customs and Border Protection has not given due consideration to the impact of Chinese GCLs on the Australian market. This issue has been discussed previously in this report at section 9.4 Other possible causes of injury – Chinese imports.

#### Product specification

Naue claimed that the Cardup project was won on factors other than price - in particular, on the specifications of the GCL it supplied (BFG 5000). Naue also claimed that the Boddington project was won (without price undercutting) because of factors other than price, namely that the total package offered by Global presented better value.

Customs and Border Protection notes that all but one of the parties that responded to the purchaser questionnaire indicated price was one of the two most important considerations along with product specifications in purchasing decisions. Additionally, Customs and Border Protection considers that certain grades of German and Australian GCLs are capable of meeting the same sets of specifications, reducing the importance of specifications when the two compete with each other.

In relation to the Cardup project, Customs and Border Protection notes Naue's assertions that the Cardup contract was awarded to Global based solely on product specifications, as two grades of German product were explicitly specified by the consultant in the final tender documents as the GCLs to be supplied for the project.

Customs and Border Protection has reviewed all information available to it concerning the award of the contract, including:

- confidential communications between Global and Naue that represent examples of the market information exchanged;
- initial and final quotes from both the applicant and Global;
- the final sales price for the GCLs supplied by Global;
- response to the end user questionnaire for the project; and
- the initial and final specifications issued.

Customs and Border Protection's analysis of the project tendering process for Cardup has indicated the following.

- An initial set of general tender documents were released for the project that did not specify Global's GCLs and included general specifications for GCLs for the project.
- The applicants produce a grade of GCLs that would have met these initial specifications, while Global does not supply a grade of GCL that meet these specifications.

- A price negotiation process followed the issue of the first specifications, during which time Global quoted highly competitive prices, which were lower than those quoted by the applicants.
- Following the pricing process, Global's NSP 4900, BFG 5000 underwent product testing, during which they were shown to meet the requirements of the project.
- At this stage, the BFG 5000 and NSP 4900 were selected as the GCLs for the project and set in the second specifications, effectively winning the project at this stage.

As a result of this analysis, it is Customs and Border Protection's view that, in the early stages of the project price negotiations prior to the final tender document being set were very important. These price negotiations impacted on which GCLs were progressed to product testing and were set in the final specifications.

The detailed analysis of evidence relating to Cardup is at Confidential Attachment 8.

Customs and Border Protection disagrees with Naue in relation to the Boddington Project because the evidence clearly demonstrates that Global prices undercut the prices of Geofabrics.

## **9.6.2 European Commission's submission**

### *1. Specific projects*

The European Commission claimed that the analysis was not based on a sufficient number of objectively selected projects.

This issue has been discussed previously in this report at section 8.6.1 Naue's submission – 4. Methodology – Specific projects.

The European Commission claimed that the SEF does not provide a detailed analysis of all of the factors influencing the purchasing decision.

Customs and Border Protection when examining the price effects of the dumped imports of GCLs from Germany on specific projects in Australia considered responses received to a questionnaire sent to purchasers of GCLs in relation to those projects. As stated in section 9.3.2 of this report Customs and Border Protection considered price and specification of the grade quoted to be the most important considerations. Other factors in the purchasing decision were considered by Customs and Border Protection during its analysis of the data provided.

### *2. Other possible causes of injury*

#### Chinese imports

The European Commission claims that the impact of the Chinese imports has not been analysed.

This issue has been discussed previously in this report at section 9.4 Other possible causes of injury – Chinese imports.

#### Fluctuations in domestic demand

The European Commission claims that the impact of fluctuations in domestic demand has not been analysed.

Customs and Border Protection disagrees with this claim as it has considered the impact of fluctuations in domestic demand when conducting its analysis of lost domestic sales by the Australian industry.

### **9.7 Conclusion – has dumping caused material injury?**

Having regard to all of the above, Customs and Border Protection considers it has established a connection between imports of GCLs from Germany at dumped prices and the injury experienced by the Australian GCL industry in the form of:

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

Customs and Border Protection considers that dumping has caused material injury to the Australian industry.

Customs and Border Protection considers that other possible causes of injury do not detract from its assessment that dumping, of itself, has caused material injury to the Australian industry.

## **10 WILL DUMPING & MATERIAL INJURY CONTINUE?**

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.

### **10.1 Australian industry claims**

The Australian industry claimed that failure to impose provisional anti-dumping measures on exports of GCLs from Germany will lead to continued material injury to the Australian industry.

Geofabrics claimed it was concerned with both the short and long term impacts of dumping on a market that it had cultivated with locally supplied product. The emergence of dumped exports from Germany in 2008 at levels which undercut Geofabrics' prices by up to 20 percent was cause for alarm. Geofabrics claimed that the significant levels of price undercutting suggest that Global is seeking to secure a "footprint" in Australia by securing volume at dumped prices over the short term. Geofabrics further claimed that material injury is anticipated as Global introduces a wider range of Naue products to compete against all locally produced GCLs marketed by Geofabrics.

Geofabrics stated it was of concern that further lost contracts and severe price undercutting from dumped German imports will cause an escalation of the material injury already experienced by the Australian industry. In 2008 the emergence of dumped German GCLs into the Australian market has impacted successive GCL contracts. The lower prices have created a new, lower level of price expectation for the pool of specialist GCL installers who now demand these prices on all projects. This is evidenced through the successive contracts for which Global has been offering imported German GCLs.

### **10.2 Customs and Border Protection's assessment in SEF**

Customs and Border Protection has considered the issues raised by interested parties relevant to determining whether dumping and material injury will continue.

#### **10.2.1 Will dumping continue?**

Customs and Border Protection considered that the German GCLs are regarded in the market as being of good quality.

Customs and Border Protection noted that the exclusive distributor of Naue GCLs in Australia, Global, is a well recognised supplier of geosynthetics, with an established distribution chain in Australia for Naue GCLs.

Customs and Border Protection also examined the prices of GCLs in relation to an order that Global had placed with Naue for delivery expected in the future. Having regard to the level of those prices relative to the weighted average export prices for Naue GCLs exported to Australia during 2008, and assuming that the normal value

has not decreased significantly in 2009, Customs and Border Protection considered the Naue export prices in future are likely to be dumped.

Customs and Border Protection therefore considers that, in the absence of anti-dumping measures, Naue is likely to continue exporting GCLs to Australia at dumped export prices.

### **10.2.2 Will injury continue?**

#### **Projects decided in 2009**

In considering whether injury will continue in the absence of anti-dumping measures, Customs and Border Protection had regard to the following projects that were decided in 2009, i.e. after the investigation period:

- Cobram;
- Red Hill Waste Management facility (Red Hill); and
- Millar Road landfill (Millar Road).

Customs and Border Protection noted that Global won the contract to supply GCLs at Red Hill, and Geofabrics won Cobram and Millar Road. Geofabrics won the Cobram and Millar Road projects with a price that was lower than its weighted average price for the second half of 2007. The evidence suggested that Geofabrics was aware that Global was competing for the Cobram and Millar Road projects.

#### **Projects where GCL supply contracts remain undecided**

In addition to the projects recently awarded in 2009, Customs and Border Protection has also examined the details of GCL prices quoted for the following projects that remain undecided:

- Merimbula STP Ponds (Merimbula); and
- Cook's Cove Kogarah landfill (Kogarah).

Customs and Border Protection considered the prices bid by Geofabrics at these projects indicated that the price depression and suppression it suffered in 2008 is continuing in 2009. Customs and Border Protection also considered that the Global prices bid for these projects are such that they represent similar degrees of price pressure to that which was evident in the market in 2008, when it was quoting prices for GCLs exported at dumped prices.

#### **Currency fluctuations**

Customs and Border Protection noted the claims by Naue and Global relating to the significance of the currency fluctuations. Global claimed the supply prices for GCLs from Germany have increased significantly, with more than a 20 per cent increase from 2007 to 2009 that is attributable to the movements in the rate of exchange between the Euro and Australian dollar.

Customs and Border Protection acknowledged there was a considerable depreciation of the Australian dollar against the Euro between August 2008 and February 2009, after which it has made some gains against the Euro<sup>6</sup>.

Customs and Border Protection considered that even during the period where the Australian dollar was valued at approximately 0.50 Euro, Global was still able to offer competitive prices for German GCLs in the Australian GCL market. Customs and Border Protection noted that Global won the contract to supply GCLs at the Red Hill Project during this period.

### **10.3 Responses to the SEF**

#### **10.3.1 Geofabrics**

Geofabrics submitted that the lost contracts in 2008 at Boddington and Cardup were significant projects for Geofabrics. In 2009 the Red Hill Waste Management Facility Project was awarded to Global which is evidence that in the absence of measures further material injury will be sustained by the Australian industry.

#### **10.3.2 Naue**

Naue submitted that:

- As to whether dumping will continue, Naue as a company has become aware that it has dumped product in the Australian market and has not accepted any order, at a price which would continue to be dumped;
- As to whether injury will continue:
  - o There is no proper basis in looking at injury factors to have regard to the weighted average prices in 2007. Customs simply states that there is a suggestion that Geofabrics was aware it was competing with Global in respect of the Cobram and Millar Road projects even if in fact Global had submitted a quote. The reliance on suggested competition between Geofabrics and Global cannot sustain any argument that material injury would be continuing on the basis of these projects;
  - o Where GCL supply contracts remain undecided, there is no evidence of price depression that can be attributed to imported German GCLs. Further, there is no consideration by Customs of the impact that Chinese prices would have on the market place and in particular in relation to the Kogarah project as the lowest cost producer of GCL in the world.

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<sup>6</sup> The average daily rate of exchange for May 2009 (to 29 May) was 0.5596 Euro to 1 Australian dollar - <http://www.rba.gov.au/Statistics/HistoricalExchangeRates/index.html> (1 June 2009)

## **10.4 Customs and Border Protection's assessment of submissions by Naue in response to the SEF**

### **10.4.1 Naue's submission**

#### *Whether dumping will continue*

Naue claimed that it is aware it has dumped product in the Australian market and has not accepted any order at a price which would continue to be dumped.

As stated in this report, Customs and Border Protection examined the prices of GCLs in relation to an order that Global had placed with Naue for delivery in 2009. Customs and Border Protection, having regard to the level of those prices relative to the weighted average export prices for Naue GCLs exported to Australia during 2008, and assuming that the normal value has not decreased significantly in 2009, considered the Naue export prices in future are likely to be dumped.

#### *Whether injury will continue*

Naue claimed that the reliance on suggested competition between Geofabrics and Global in respect of Cobram and Millar Road projects cannot sustain any argument that material injury would be continuing on the basis of these projects.

As stated previously in this report, Customs and Border Protection noted that Geofabrics won the Cobram and Millar Road contracts to supply GCLs with a price that was lower than its weighted average for the second half of 2007. Based on the same methodology used in its analysis of price effect in this report Customs and Border Protection found that this is evidence that injury to the Australian industry by dumped German imports will continue.

Naue further claimed in relation to supply contracts that remain undecided, there is no evidence of price depression that can be attributed to imported German GCLs. Naue claimed that there is no consideration by Customs of the impact of Chinese prices on the market, in particular in relation to the Kogarah project.

As stated previously in this report, Customs and Border Protection considered that Geofabrics' price bids, in relation to GCL supply contracts at the Merimbula and Kogarah projects, were at levels that indicated the price depression and suppression of 2008 it suffered in 2008 were continuing in 2009. Customs and Border Protection also considers that Global's bids, in relation to these projects, have been exerting similar degrees of pressure on the market to that evident in 2008.

As stated previously in this report, Customs and Border Protection has considered the impact of Chinese prices on the market. In particular in analysing the Kogarah project, Customs and Border Protection has considered information relating to bids made by the suppliers of Chinese product.

## **10.5 Conclusion – will dumping and material injury continue?**

Having regard to all of the above, Customs and Border Protection considers 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.

## **11 NON-INJURIOUS PRICE**

Dumping duties may be applied where it is established that dumped imports have caused or threatened to cause injury to the Australian industry producing like goods. The level of dumping duty imposed by the Minister cannot exceed the margin of dumping, but a lesser duty may be applied if it is determined that it is sufficient to remove the injury. This lesser duty provision is contained in the World Trade Organisation Anti-Dumping Agreement and subsection 8(5A) of the *Customs Tariff (Anti-Dumping) Act 1975*.

The non-injurious price (NIP) provides the mechanism whereby this lesser duty provision is given effect. It is the price that would be sufficient to remove the injury caused to the Australian industry by the dumping. The NIP is defined in section 269TACA.

Anti-dumping and countervailing duties are based on free-on-board (FOB) prices in the country of export. Therefore a NIP is calculated in FOB terms for the country of export.

### **11.1 Unsuppressed selling price**

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

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

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

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

Customs and Border Protection, in the Australian industry visit report, foreshadowed that a suitable basis for USP may be Geofabrics weighted average domestic selling prices in the second half of 2007.

### **11.2 Applicants' comments**

The applicants submitted that in the event the USP is based upon Geofabrics' selling prices for the latter half of 2007, these prices require adjustment for inflation.

### **11.3 Exporter's comments**

The exporter initially submitted that it had no difficulty in Customs and Border Protection establishing a USP using Geofabrics' selling price at a time unaffected by dumping, i.e. using Geofabrics' weighted average selling price in the second half of 2007.

The exporter referred to the applicants' claim that they sell at a similar price range to that of Chinese imports and it acknowledged that Customs and Border Protection found that the Chinese product competes in the same markets as the applicants' products. On this basis, Naue referred to some documents provided by Global demonstrating the selling price of Chinese GCLs in Australia in 2007 and it suggests this price can be used to determine a USP.

In a subsequent submission on USP, Naue stated that Customs and Border Protection's policy preference for a one year minimum period for establishing a USP (when based on selling prices from a period unaffected by dumping) should be followed, not the use of Geofabrics prices in the second half of 2007. It referred to information provided by the importer as the basis for its change in position.

### **11.4 Importer's comments**

Global claims that Geofabrics accepts the Chinese prices are non-injurious and not damaging to the Australian GCL industry. Global therefore considers that the USP should be based on the selling price in Australia for the Chinese GCLs, namely the prices achieved for Chinese GCLs sold by Volclay. Global provided prices for Chinese GCLs from 2006 to 2008, and some evidence to support those prices.

Global considers the weighted average price of Geofabrics over 2007 will not be a fair USP. Global considers that Geofabrics has many branches and sales and support staff, and it has 80 per cent of the market and dominant geographical presence. Global consider a USP should not be skewed by a monopoly or duopoly.

### **11.5 Customs and Border Protection's view on USP and NIP**

Customs and Border Protection acknowledges that Trade Measures Policy Advice No. 1/2004 states that if using Australian industry selling prices at a time unaffected by dumping for USP, then there is a preference for a one year minimum period to be taken into account.

In this case, the sales data available for the Australian GCL industry in the financial year 2007/08 cannot be broken into two half-years, prohibiting an assessment of average selling prices for the calendar year 2007 (noting the Australian industry provided detailed sales data for the 18 months from July 2007 to December 2008). This is the reason why Customs and Border Protection chose the next most appropriate period in a market unaffected by dumping, namely the second half of 2007.

As an alternative, Customs and Border Protection considered basing the USP on weighted average Geofabrics selling prices for the 18 month period from July 2006 to December 2007. Customs and Border Protection found that this approach provides

little change to the USP calculations determined with reference only to the second half of 2007. In any case, Customs and Border Protection considers it is preferable, in this case, to rely upon the second half of 2007 as the most recent and representative sales of GCLs by the Australian industry in a market unaffected by dumping.

Customs and Border Protection considers it would be inappropriate to base the USP on selling prices in Australia for the Chinese GCLs. Assuming these prices might reflect some of the GCL prices for the Australian industry, this approach would still only amount to an estimate of GCL prices that the Australian industry could achieve in a market unaffected by dumping. It is difficult to see how this approach would be preferable to using the actual selling prices of the Australian industry in a market unaffected by dumping (i.e. verified Geofabrics prices achieved in the second half of 2007).

Therefore, Customs and Border Protection considers the most appropriate basis for the USP is the Geofabrics selling prices of GCLs in the second half of 2007. Customs and Border Protection considers that to calculate the NIP at the FOB price level, it should deduct from the USP amounts for:

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

### **11.5.1 Comparison of NIP with export price**

Customs and Border Protection compared the NIPs calculated for each grade of GCL exported to Australia by Naue in the investigation period to Naue's respective weighted average export prices for the same period.

Based on the respective export volumes of the three grades, Customs and Border Protection then calculated a weighted average difference between the NIPs and export prices. Customs and Border Protection found the NIPs exceeded the export prices by a weighted average margin that is less than the dumping margin of 26.7 per cent. This indicates that, if anti-dumping measures are imposed, the lesser duty rule may come into effect.

## **11.6 Responses to the SEF**

### **11.6.1 Geofabrics**

Geofabrics submitted that whilst it accepts Customs and Border Protection's preferred methodology may be suitable for USP purposes, it considers that it is critical that 2007 selling prices be adjusted for inflationary effects evident through 2008. Geofabrics requests Customs and Border Protection include an upward adjustment of 3.7 percent.

### **11.6.2 Naue**

Naue is not aware of any particular reason why 2007/08 cannot be broken into two half years. Customs states that the Australian industry provided detailed sales information from July 2007 to December 2008, but information from 1 January 2007 to 30 June 2007 could have been provided if requested from the applicants, once it had agreed to the applicants request to make the investigation period calendar year 2008.

### **11.6.3 European Commission**

European Commission submitted that more information should be disclosed on the methodology used for the calculation of injury margin. This is a key aspect given the issues raised above concerning the undercutting calculations (disregard of transactions which were not undercut).

## **11.7 Customs and Border Protection's assessment of submissions by Geofabrics, Naue and the European Commission in response to the SEF**

### **11.7.1 Geofabrics' submission**

Customs and Border Protection is of the view that an adjustment to the USP for inflation is not warranted in the circumstances given the efficiencies achieved by Elco Solutions in its CTMS.

### **11.7.2 Naue's submission**

Naue claimed information from 1 January 2007 to 30 June 2007 could have been provided to Customs if requested.

This issue has been discussed previously in section 8.6.1 Naue's submission – 4. Methodology – Financial year versus calendar year.

### **11.7.3 European Commission's submission**

The European Commission requested that more information on the methodology used to calculate injury margin be disclosed.

Customs and Border Protection is of the view that the methodology used for the calculation of injury margin has been sufficiently explained in the report without revealing confidential information.

## 11.8 Conclusion – NIP

Having regard to all of the above, Customs and Border Protection considers the most appropriate basis for a USP is Geofabrics' weighted average selling price for the second half of 2007. Customs and Border Protection considers that to calculate the NIP at the FOB price level, it should deduct from the USP amounts for:

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

Customs and Border Protection's USP and NIP calculations form Confidential Attachment 11.

## 12 RECOMMENDATIONS

Customs and Border Protection recommends the Minister impose anti-dumping measures, in the form of a dumping duty notice, in respect of GCLs exported from Germany to Australia by all exporters from Germany.

### **Customs and Border Protection recommends that the Minister be satisfied:**

- In accordance with subsection 269TACB(4), the weighted average of export prices of GCLs over the investigation period is less than the weighted average of corresponding normal values over the investigation period in respect of GCLs exported to Australia from Germany by Naue;
- In accordance with subsection 269TG(1), the amount of the export price of GCLs that have been exported to Australia from Germany by Naue 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 caused; and
- In accordance with subsection 269TG(2), the amount of the export price of GCLs already exported to Australia from Germany by Naue, 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 by Naue from Germany 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.

### **Customs and Border Protection recommends that the Minister determine:**

- In accordance with subsection 269TAAD(5), the amounts for the cost of production or manufacture of goods in the country of export and the administrative, selling and general costs associated with the sale of those goods.
- In accordance with subsection 269TACB(1), 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 GCLs by Naue were dumped.

### **Customs and Border Protection recommends that the Minister direct:**

- In accordance with subsection 269TAC(8), the price paid or payable for like goods sold by Naue be taken to be such a price adjusted for differences between domestic and export sales to ensure a fair comparison
- In accordance with subsection 8(5) of the Customs Tariff (Anti-Dumping) Act 1975, that the element of interim dumping duty payable on GCLs the subject of a notice under subsections 269TG(1) or (2) be ascertained by reference to a measure of quantity (in square metres) of those particular goods.

### **Customs and Border Protection recommends the Minister compare:**

- In accordance with subsection 269TACB(2)(a), the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

**Customs and Border Protection recommends the Minister declare:**

- In accordance with subsection 269TG(1) by public notice, that section 8 of the Customs Tariff (Anti-Dumping) Act 1975 applies to:
  - o the goods exported by Naue from Germany, to the extent permitted by subsection 269TN; and
  - o like goods that were exported to Australia by Naue from Germany after the CEO made a preliminary affirmative determination under subsection 269TD on 8 May 2009 but before publication of the notice, to the extent permitted by subsection 269TN, and
- In accordance with subsection 269TG(2), by public notice, that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia by all exporters from Germany after the date of publication of the notice.

## 13 FACTS AND EVIDENCE RELIED UPON

Section 269TEA(5) requires that the report set out the material findings of fact on which the recommendations are based and also provide particulars of the evidence relied upon to support those findings.

Customs and Border Protection's reasons for the recommendations contained in this report are:

Topic	Material finding of facts	Evidence relied upon to support those findings
The goods the subject of the application	<p>The goods the subject of the application are geosynthetic clay liners, commonly referred to as GCLs, comprising one or more geotextile layers and one or more layers of bentonite clay.</p> <p>The goods are correctly classified to tariff subheading 6815.99.00, statistical code 09 in Schedule 3 of the <i>Customs Tariff Act 1995 (Cth)</i>. The rate of duty for the goods exported from Germany is 5 percent.</p>	Industry application
Like goods	GCLs manufactured by Elco Solutions Pty Ltd are like goods to the imported goods. Although not identical in all respects to the imported goods, GCLs manufactured by the Australian industry have characteristics closely resembling those of the imported goods.	Information supplied by the Australian industry, importer, exporter and other interested parties.
The Australian industry	Elco Solutions Pty Ltd and Geofabrics Australasia Pty Ltd comprise the Australian industry.	Information supplied by the Australian industry.
The Australian market	The Australian market for GCLs is supplied by locally manufactured product and by imported goods. The Australian industry and the importer of German product sells GCLs to asset owners, contractors and specialist lining sub-contractors. The Australian market is broadly divided into four market segments: landfill, mining, building and construction and consumer.	Information supplied by the Australian industry, importer, exporter, other interested parties and Customs and Border Protection's commercial import records.
The dumping investigation	<p>Customs and Border Protection identified one exporter of GCLs from Germany to Australia during the investigation period.</p> <p>Customs and Border Protection established that GCLs exported to Australia by the exporter from Germany over the investigation period were at dumped prices. The dumping margin calculated for the exporter from Germany was not negligible. The volume of dumped goods exported from Germany was not negligible.</p>	Information provided by the importer, exporter, other interested parties and Customs and Border Protection's commercial import records.

<b>Topic</b>	<b>Material finding of facts</b>	<b>Evidence relied upon to support those findings</b>
The economic condition of the industry	<p>The Australian GCL industry has experienced the following forms of injury:</p> <ul style="list-style-type: none"> <li>- Lost sales volume;</li> <li>- Lost market share;</li> <li>- Price undercutting;</li> <li>- Price depression;</li> <li>- price suppression;</li> <li>- lost profits; and</li> <li>- reduced profitability.</li> </ul>	Information provided by the Australian industry, importer, exporter, other interested parties and Customs and Border Protection's commercial import records.
Has dumping caused material injury?	GCLs exported from Germany to Australia at dumped prices have caused material injury to the Australian industry.	Information provided by the Australian industry, importer, exporter, other interested parties and Customs and Border Protection's commercial import records.
Will dumping and material injury continue?	Exports of GCLs by exporters from Germany in the future may be at dumped prices and continued dumping may cause further material injury to the Australian industry.	Information provided by the Australian industry, importer, exporter, other interested parties and Customs and Border Protection's commercial import records.
Non injurious price	Most appropriate basis for calculating a unsuppressed selling price (USP) is Geofabrics selling price in the second half of 2007. The non injurious price at FOB level should be calculated by deducting from the USP amounts for importer profit, importer administrative, selling and general expenses, importer into-store costs and overseas freight and marine insurance.	Information provided by the Australian industry and the importer

**14 CONFIDENTIAL ATTACHMENTS**

<b>Attachment 1</b>	Australian market size and share
<b>Attachment 2</b>	Export price calculations
<b>Attachment 3</b>	Normal value calculations
<b>Attachment 4</b>	Dumping margin calculations
<b>Attachment 5</b>	Summary of information relating to specific projects
<b>Attachment 6</b>	Price undercutting analysis
<b>Attachment 7</b>	Injury analysis
<b>Attachment 8</b>	Cardup project analysis
<b>Attachment 9</b>	Price analysis by project
<b>Attachment 10</b>	Summary of Volclay's sales information
<b>Attachment 11</b>	USP and NIP calculations