



R E P O R T

CUSTOMS ACT 1901 - PART XVB

TRADE MEASURES INITIATION REPORT 145

**CONSIDERATION OF AN APPLICATION FOR A DUMPING
DUTY NOTICE**

GEOSYNTHETIC CLAY LINERS (GCLs)

FEDERAL REPUBLIC OF GERMANY

24 December 2008

CONTENTS

CONTENTS	2
ABBREVIATIONS.....	4
1 INTRODUCTION.....	5
1.1 APPLICATION.....	5
1.2 COMPANY INFORMATION.....	5
1.2.1 <i>Geofabrics</i>	5
1.2.2 <i>Elco</i>	5
1.3 PREVIOUS GCL CASES.....	5
1.4 CONSIDERATION OF THE APPLICATION	5
2 DOES THE APPLICATION COMPLY WITH SUBSECTION 269TB(4)?.....	7
2.1 APPROVED FORM.....	7
2.2 SUPPORTED BY AUSTRALIAN INDUSTRY	7
2.3 CONCLUSION – COMPLIANCE WITH SUBSECTION 269TB(4).....	7
3 IS THERE AN AUSTRALIAN INDUSTRY IN RESPECT OF LIKE GOODS?	8
3.1 THE GOODS THE SUBJECT OF THE APPLICATION	8
3.1.1 <i>Description</i>	8
3.1.2 <i>Tariff classification</i>	9
3.2 LOCALLY PRODUCED LIKE GOODS	9
3.3 MANUFACTURED IN AUSTRALIA	10
3.3.1 <i>Manufacturing/production process</i>	10
3.3.2 <i>Substantial manufacture</i>	11
3.4 AUSTRALIAN MARKET	11
3.4.1 <i>Market demand</i>	11
3.4.2 <i>Market supply</i>	12
3.5 AUSTRALIAN INDUSTRY INFORMATION	14
3.5.1 <i>Australian industry’s sales</i>	14
3.5.2 <i>General accounting/administration information</i>	14
3.5.3 <i>Cost information</i>	14
3.6 CONCLUSION – AUSTRALIAN INDUSTRY	15
4 REASONABLE GROUNDS FOR THE PUBLICATION OF A DUMPING DUTY NOTICE – ECONOMIC CONDITION OF THE INDUSTRY	16
4.1 THE APPLICANT’S CLAIMS	16
4.2 COMMENCEMENT OF MATERIAL INJURY	17
4.3 APPROACH TO INJURY ANALYSIS	17
4.4 VOLUME EFFECTS.....	17
4.4.1 <i>Lost sales volume</i>	17
4.4.2 <i>Lost market share</i>	19
4.5 PRICE EFFECTS.....	20
4.5.1 <i>Price undercutting</i>	20
4.5.2 <i>Price depression</i>	20
4.5.3 <i>Price suppression</i>	21
4.6 PROFIT EFFECTS.....	22
4.7 OTHER ECONOMIC FACTORS	24
4.7.1 <i>Reduced sales revenue</i>	24
4.7.2 <i>Reduced capacity utilisation</i>	24
4.7.3 <i>Reduced employment</i>	24
4.7.4 <i>Increase in inventory levels</i>	24
4.7.5 <i>Reduced return on investment</i>	25
4.7.6 <i>Other factors</i>	25
4.8 CONCLUSION – ECONOMIC CONDITION OF THE INDUSTRY.....	25
5 REASONABLE GROUNDS FOR THE PUBLICATION OF A DUMPING DUTY NOTICE – DUMPING.....	26

5.1	GENERAL.....	26
5.1.1	<i>Exporter/Importer.....</i>	26
5.1.2	<i>Analysis period.....</i>	26
5.1.3	<i>Import volumes.....</i>	26
5.2	EXPORT PRICE.....	27
5.3	NORMAL VALUE.....	27
5.3.1	<i>Selling price in the exporter's domestic market.....</i>	27
5.3.2	<i>Selling price in the exporter's domestic market using another method.....</i>	28
5.4	ADJUSTMENTS.....	28
5.5	DUMPING MARGIN.....	28
5.6	CONCLUSION.....	29
6	REASONABLE GROUNDS FOR THE PUBLICATION OF A DUMPING DUTY NOTICE - CAUSAL LINK.....	30
6.1	CAUSAL LINK.....	30
6.1.1	<i>The Applicant's claims.....</i>	30
6.1.2	<i>Assessment.....</i>	31
6.2	FACTORS OTHER THAN DUMPING AFFECTING ECONOMIC PERFORMANCE.....	33
6.2.1	<i>Export sales.....</i>	33
6.2.2	<i>GCLs imported from China.....</i>	33
6.2.3	<i>Substitutable products.....</i>	33
6.3	CONCLUSION.....	33
7	SUPPLEMENTARY ITEMS.....	34
7.1	SUBSIDY.....	34
7.2	THREAT OF MATERIAL INJURY.....	34
7.3	CLOSE PROCESSED AGRICULTURAL GOODS.....	35
7.4	EXPORTS FROM A NON-MARKET ECONOMY.....	35
7.5	EXPORTS FROM AN 'ECONOMY IN TRANSITION'.....	35
7.6	AGGREGATION OF VOLUMES OF DUMPED GOODS.....	35
8	COMPARISON OF EXPORT PRICE AND NON INJURIOUS PRICE.....	36
8.1	CALCULATION OF USP/NIP.....	36
9	CONCLUSION.....	37
10	CONFIDENTIAL ATTACHMENTS.....	38
10.1	AUSTRALIAN MARKET & MARKET SHARE.....	38
10.2	AUSTRALIAN INDUSTRY DOMESTIC SALES VOLUMES.....	38
10.3	AUSTRALIAN INDUSTRY DOMESTIC COST TO MAKE & SELL AND PRICES.....	38
10.4	AUSTRALIAN INDUSTRY DOMESTIC PROFITS & PROFITABILITY.....	38
10.5	NIP ESTIMATES AND COMPARISON WITH EXPORT PRICES.....	38

Abbreviations

\$	Australian dollars
Act	Customs Act 1901
CTMS	Cost To Make & Sell
Elco	Elco Solutions Pty Ltd
EN	European Standard
FOB	Free On Board
GCLs	Geosynthetic Clay Liners
Geofabrics	Geofabrics Australasia Pty Ltd
Germany	Federal Republic of Germany
Global	Global Synthetics Pty Ltd
ISO	International Standard
m ²	Square metres
Minister	Minister for Home Affairs
Naue	Naue GmbH & Co. KG
NIP	Non-injurious Price
R & D	Research & Development
Tariff Act	The Customs Tariff Act 1995
the goods	the goods the subject of the application
USP	Unsuppressed Selling Price
WA	Western Australia

1 Introduction

1.1 Application

On 12 November 2008, Geofabrics Australasia Pty Ltd (Geofabrics) lodged an application under section 269TB of the *Customs Act 1901* (the Act) (references to any section or subsection shall be references to sections or subsections of the Act).

The application requests that the Minister for Home Affairs (Minister) publish a dumping duty notice in respect of geosynthetic clay liners (GCLs) exported to Australia from the Federal Republic of Germany (Germany).

The application has been made by Geofabrics on behalf of its wholly-owned subsidiary Elco Solutions Pty Ltd (Elco) which is the sole manufacturer of GCLs in Australia. The application states that GCLs produced by Elco are marketed and sold by Geofabrics. These two companies are hereafter referred to in this report as the applicant.

1.2 Company information

1.2.1 Geofabrics

Geofabrics is a privately owned company. Geofabrics is wholly owned by Commodity Trading International (Bermuda) which is 50 percent owned by Noel P Hunt International (Bermuda) and 50 percent owned by Tencate Geosynthetics Austria GmbH (formerly Polyfelt GmbH).

The application includes a group structure chart for Geofabrics and its related companies in **Confidential Attachment A-2.2.1**. The application includes an organisation chart for Geofabrics at **Confidential Attachment A-2.2.2**.

1.2.2 Elco

Elco is a privately owned company wholly owned by Geofabrics. The application includes an organisation chart for Elco at **Confidential Attachment A-2.2.3**.

Elco has been manufacturing GCLs at its Southport, Queensland facility since 1995. (Elco traded as Soil Filters Australia Pty Ltd until 10 February 2006).

1.3 Previous GCL cases

There have been no previous cases involving GCLs.

1.4 Consideration of the application

Pursuant to subsection 269TC(1), the decision whether or not to reject the application must be made within 20 days after the lodgement date. The application was lodged on 12 November 2008. Additional information was provided by the applicant on 2 December 2008 and 11 December 2008. This information was not requested by Customs therefore, the 20-day consideration period was recommenced on both

occasions. As a result the decision on whether or not to reject the application must be made no later than 31 December 2008.

Subsection 269TC(1) specifies the matters which must be considered in making a decision whether to reject the application. These matters are:

- whether the application complies with subsection 269TB(4);
- that there is, or is likely to be established, an Australian industry in respect of like goods; and
- that there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application.

The above matters are examined in the following sections of this report.

2 Does the application comply with subsection 269TB(4)?

Subsection 269TB(4) requires that the application be in writing, be in an approved form, contain such information as the form requires, be signed in the manner indicated by the form and be supported by a sufficient part of the Australian industry.

2.1 Approved form

The applicant has lodged an application, in writing, for the publication of a dumping duty notice and it is in the approved form. The form has been signed.

The applicant has provided all information required by the form. Two confidential versions of the application and one public record version of the application were submitted, as well as copies of both versions of the application and attachments/appendices on compact disk.

We consider that the non-confidential public record version of the application contains sufficient detail to allow a reasonable understanding of the substance of the information in accordance with the requirements of section 269ZJ.

2.2 Supported by Australian industry

The applicant has submitted that Elco is the only manufacturer of GCLs in Australia and therefore accounts for:

- more than 50% of the total production or manufacture of like goods produced or manufactured by that portion of the Australian industry that has expressed either support for, or opposition to, the application; and
- not less than 25% of the total production or manufacture of like goods in Australia.

The application includes Australian production data in **Confidential Appendix A1**. As Elco is the sole manufacturer of GCLs in Australia, the Appendix A1 data represents the production volume of GCLs by Elco for all grades manufactured in 2007/08 and the first quarter of 2008/09 (i.e. 15 month period).

Based on the information provided in the application, we consider that the application is supported by a sufficient part of the Australian industry.

2.3 Conclusion – Compliance with subsection 269TB(4)

Based on the information submitted by the applicant, we consider that the application complies with subsection 269TB(4).

3 Is there an Australian industry in respect of like goods?

3.1 The goods the subject of the application

3.1.1 Description

The imported goods the subject of this application (the goods) are geosynthetic clay liners, comprising one or more geotextile layers and one or more layers of bentonite clay, exported from Germany to Australia.

The applicant provides the additional details in respect of the goods:

Geosynthetic Clay Liners (“GCLs”) usually includes 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 ² to 5500 g/m ²
Cover textile	100 g/m ² to 450 g/m ²
Carrier textile	80 g/m ² to 550 g/m ²
Performance Criteria	
Permeability	No greater than 7×10^{-10} 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 a sealing barrier against liquids and gases in various civil and environmental applications.

The International Geosynthetic Society (“IGS”) defines “geosynthetic” as a planar, polymeric (synthetic or natural) textile material used in contact with solid/rock and/or any other geotechnical material in civil engineering applications.

GCLs are technical products and the above technical description is considered relevant within the industry. A brief, non technical description is:

“Goods in rolls (with roll widths of between 1 and 6 metres, and lengths between 10 and 100 metres) giving the appearance of thick, heavy textiles, consisting of powdered or granulated clay encapsulated between layers of synthetic fabric.”

The product exported from Germany is manufactured by Naue GmbH & Co. KG (Naue) and marketed under the trade name Bentofix. The application includes the specifications for the imported grades of GCLs (Bentofix BFG5000, NSP4000, NSP4300 and NSP4900) at **Non-Confidential Attachment A-3.1.1**.

3.1.2 Tariff classification

The applicant identifies the goods as classified to subheading 6815.99.00, statistical code 09 of Schedule 3 to the *Customs Tariff Act 1995*. The rate of duty on goods imported under this subheading from Germany is 5 percent. This classification was confirmed by the Customs Tariff Operations Section.

3.2 Locally produced like goods

Subsection 269T(1) defines like goods as goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration have characteristics closely resembling those of the goods under consideration.

The applicant claims that the Australian goods are alike in most, if not all, characteristics to the imported goods. The applicant claims that similarity in characteristics is evident in the physical, commercial, functional and production likeness of the goods.

The applicant states that the locally made GCLs are marketed under the 'Elcoseal' brand. The application includes a product brochure detailing the applicant's range of GCLs at **Non-Confidential Attachment A-3.3.1** and a technical data sheet identifying the properties of the grades X800, X1000, X2000 and X3000 at **Non-Confidential Attachment A-3.3.2**.

The application includes a comparison matrix of Elcoseal and Naue (Bentofix) grades of GCL at **Non-Confidential Attachment A-3.3.3**. The application also includes a summary of comparative grades of Elcoseal and Bentofix in Table 3.3.1 which is reproduced below.

ELCOSEAL (Elco)	Bentofix (Naue)
X800	NSP4000, NSP4300
X1000	NSP4300, NSP4900
X2000	NSP4900, BFG5000
X3000	BFG5000

We note that there are some inconsistencies between the comparison of grades shown in the table and the attachment, however we consider this does not affect whether the goods manufactured in Australia are like goods to the goods the subject of the application.

The applicant states that until 31 December 2007, the locally made product was manufactured under a licence granted by Naue. Up until this time Naue held the patent for the production process. The machinery on which the locally made product is manufactured was previously used by Naue and subsequently sold to the applicant. The applicant claims that the imported and locally made products are manufactured according to very similar processes from similar raw materials.

We examined the information provided in the application and note the following similarities between the grades of Elcoseal and Bentofix:

- physical likeness: the application includes a comparative matrix of the grades as well as technical data sheets for both the goods made in Australia and the goods the subject of the application which include the technical specifications for each of the major grades;
- commercial likeness: the goods made in Australia and the goods the subject of the application compete directly for the same contracts;
- functional likeness: certain grades of the goods made in Australia and certain grades of the goods the subject of the application are functionally substitutable; and
- production likeness: the goods made in Australia and the goods the subject of the application are manufactured from similar raw materials using a similar manufacturing process.

Conclusion

Based on the information contained in the application we consider that the applicant manufactures and sells goods in the Australian market that are like goods to the goods the subject of the application.

3.3 Manufactured in Australia

Subsections 269T(2) and 269T(3) specify that for goods to be regarded as being produced in Australia they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

3.3.1 Manufacturing/production process

The applicant states that the manufacture of GCLs involves the following five steps:

- (i) the manufacture of the cover textile;
- (ii) the introduction of the carrier textile;
- (iii) the introduction of the bentonite clay;
- (iv) the encapsulation of the bentonite clay; and
- (v) the bonding of the geocomposite.

The applicant describes each of the above processes in detail in the application. A diagram showing the GCL manufacturing process is included in ***Non-confidential Attachment A-3.6.2***.

The applicant states that the polyester and polypropylene fibre used in the production of the cover and carrier textiles is imported. The carrier textile, in certain circumstances, is bonded with an imported woven textile to form a composite to aid the elongation characteristics of the woven component. The bentonite clay is sourced wholly in Australia.

3.3.2 Substantial manufacture

The applicant states that the manufacture of GCLs, including the five steps listed in the previous section, take place at Elco's manufacturing facility located at Southport, Queensland.

Conclusion

Based on the information contained in the application, we consider that the manufacturing process undertaken by Elco to be a substantial process in the manufacture of GCLs. We therefore consider that the goods made and sold by the applicant can be regarded as being produced in Australia.

3.4 Australian market

3.4.1 Market demand

The applicant states that GCLs are predominantly used as liners in landfills, liquid containment, secondary containment and mining applications. The application includes examples of specific end-use applications and selected pictorials of GCL applications at **Non-Confidential Attachment A-3.3.1**.

The applicant claims that the Australian market for GCLs is entering a growth phase in relation to the emergence of new applications for GCLs, particularly in mining and secondary containment. The applicant states that it is actively participating in on-going research and development to understand the relationships and interactions between bentonite clay and various mining wastes and tailings' liquors; hydrocarbons; and high and low pH wastes. The applicant also claims this research has resulted in the application for provisional patents and will provide further opportunities in new containment applications for GCLs.

The applicant claims that the Australian market is driven by demand in the following primary market segments: landfills; mining; industry (including construction); and consumer. The applicant claims that there are a number of drivers specific to individual market segments which impact on demand for GCLs. The drivers are listed in the application and summarised below:

- *the landfill market is characterised by large contracts i.e. a small contract is considered to be 10,000m² and a large contract would be 80,000m². Contracts above 30,000m² are termed projects. There is a fairly consistent demand at the small contract level however overall demand in this market segment fluctuates and is largely dependent on projects. Source of demand is state and local governments;*
- *in the mining market, projects are the primary driver generally in the 30,000m² range. Geofabrics is investing significant resources in R&D in an attempt to grow this segment of the market. Source of demand is mining houses.*
- *the industry market is fairly consistent and consists primarily of basement sealing. Imports dominate this market (particularly from China) and contract sizes range from 1,000 to 30,000m². Overall market demand fluctuates with the rise and fall of construction activity. Source of demand is the private sector; and*

- the consumer market (e.g. agriculture & golf) is a stable market with steady growth. Contracts can be as little as 200 up to 1,500m².

The applicant states that Geofabrics holds stock at both the GCL factory (Southport, Queensland) and at warehousing facilities located in each of the main capital cities and distributes from these facilities.

The applicant claims that the tender/quotation process may be generally described as:

- the asset owner approaches a consultant with a request to design a facility;
- the consultant will consider the lining materials to be used in the construction of the facility. The applicant at this stage will provide advice to the consultant on the performance of various alternatives and may also provide design proposals;
- the consultant completes the design specification and the project is put out to formal tender;
- contractors tender for the project, basing their tender prices on indicative pricing obtained from various material suppliers including the applicant; and
- the tender is awarded and the winning contractor will then negotiate prices with suppliers, including the applicant.

The applicant states that customers for GCLs include civil engineering companies and earthmoving contractors who purchase the goods for designated projects. These customers would install the product on behalf of state and local governments, mining companies, landfill operators etc. Typical customers in the industry market are waterproofing contractors involved in the waterproofing of building basements. Customers in the consumer market are typically farmers, golf course operators, landscapers and home owners.

The applicant claims that a significant proportion of sales of GCLs are made to a pool of specialist installers who are contractors whose sole or primary business is the installation of liners. They may be the main contractor or a subcontractor in a GCL application. This may be the case where a project requires significant earthworks or civil engineering in addition to the installation of the liners. The application includes a list of specialist installers, and claims these installers seek to obtain reduced prices from Geofabrics in response to import offers of Naue GCLs.

The applicant claims that there are a number of commercially significant market substitutes for GCLs. These include plastic liners, naturally occurring clays (compacted clay layer or CCL), evaporative covers, concrete lining systems and phyto-covers which use the benefits of nature (soil and vegetation).

3.4.2 Market supply

The application includes an estimation of the Australian market size for GCLs and market shares in **Confidential Appendix A2**. The Australian market data is provided on a financial year basis and is based on volume in square metres (m²) and value in Australian dollars (\$) of sales by the Australian industry and an estimation of volume and sales of imported product for 'known projects' and 'other sales'. The application includes details of importers and sources of supply.

The applicant states that locally manufactured GCLs are produced by Elco and marketed and sold by Geofabrics. The applicant also states that the goods imported from Germany are produced by Naue and marketed and distributed in Australia by Global Synthetics Pty Ltd (Global).

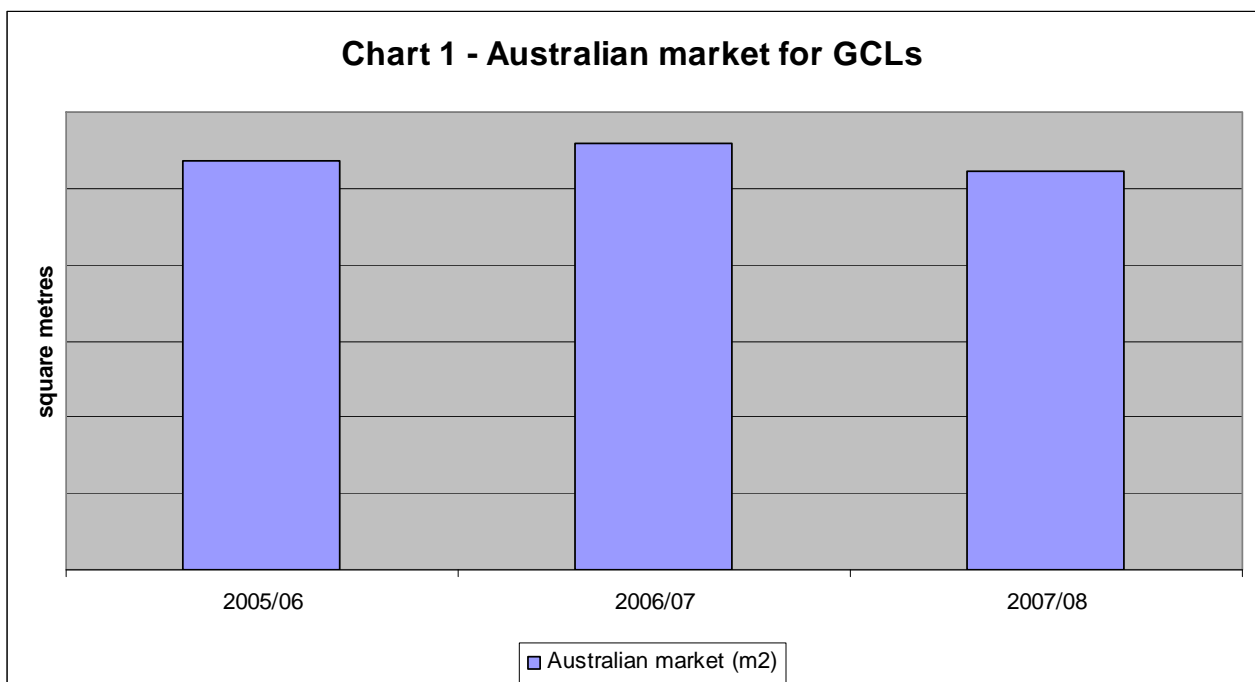
The applicant states that market volume is estimated based on information obtained from a number of sources including: tender bulletins (list of all civil engineering projects throughout Australia); contact with major installers and consultants; Geofabrics' own information on projects; discussions with suppliers of other products; discussions with contractors; and other sources such as construction or mining journals and the Internet.

The applicant claims that imports from Germany were not evident in the Australian market prior to 2007/08. The applicant claims that German imports of the goods have commenced only in 2008 and the volume is estimated to be between 35,000m² and 65,000m².

The applicant claims that a significant proportion of other imports of the goods are of Chinese origin, which has been evident in the Australian market since 2004/05. The applicant claims that most of the Chinese product is sold in the industry market segment.

We examined the Australian market from 2005/06 to 2007/08 using information supplied by the applicant and information obtained from the Customs import database. This information shows that GCLs of various grades have been imported into the Australian market since at least 2005/06 and from Germany commencing in 2007/08. The Australian market for total GCLs (imported and locally manufactured) is shown in Chart 1.

We note that the data stored in the Customs import database does not permit accurate identification of GCL information because of the broad nature of the tariff classification. Therefore we have accepted the applicant's estimates of market size and market share for the purpose of market analysis.



3.5 Australian industry information

3.5.1 Australian industry's sales

The applicant provided a summary of sales data for Geofabrics and Elco in separate **Confidential Appendices A3** for both domestic and export sales by grade for the periods 2005/06, 2006/07, 2007/08 and first quarter of 2008/09. The application includes a reconciliation of GCL sales by Elco with Geofabrics' Cost of Goods Sold.

The applicant also provided detailed information relating to all sales of GCLs during 2007/08 and for the first quarter of 2008/09 in **Confidential Appendix A-4**. We noted the sales data in the Appendix A-4 reconciled with summary sales data contained in **Confidential Appendix A-3 and A-6.1**.

The applicant also includes commercial documentation for selected domestic sales in each quarter for the period 1 July 2007 to 30 September 2008 at **Confidential Attachment A-5.9**.

We note there is a minor discrepancy in the data in **Confidential Appendix A-3** for Elco. However, we consider that the sales information as presented is reasonable for the purpose of assessing the economic condition of the industry.

3.5.2 General accounting/administration information

The application includes general accounting and administration information, in particular:

- chart of accounts for Elco (**Confidential Attachment A-6.3.1**);
- audited financial accounts for Geofabrics for the financial years ending 30 June 2006, 30 June 2007 and 30 June 2008 (**Confidential Attachment A-2.9.1**);
- audited financial accounts for Elco for the financial years ending 30 June 2007 and 30 June 2008 at **Confidential Attachment A-2.9.2**;
- annual cash flow statements and Profit & Loss Statements for the periods ending 30 June 2007 and 30 June 2008 for the manufacturing operations of Elco (**Confidential Attachment A-2.9.2**); and
- internal management reports for Elco's manufacturing units including manufacturing statements for the GCL unit; the non-woven unit; and the fabrication & sewing unit including consolidated profit & loss statement and balance sheet for the month of June 2007 and June 2008 are included at **Confidential Attachment A6.3.1**.

3.5.3 Cost information

The applicant provided cost to make and sell (CTMS) information for Geofabrics and Elco for sales of each grade in 2005/06, 2006/07, 2007/08 and first quarter of 2008/09 in **Confidential Appendix A-6.1** (domestic) and in **Confidential Appendix A-6.2** (export). Supporting documentation has also been provided for selling, general and administrative (SG&A) expenses for 2005/06, 2006/07, 2007/08 and first quarter of 2008/09. The applicant states that the cost data provided is based on actual cost.

We note that there are some minor discrepancies in the data provided in Confidential Appendix 6.1 for Elco. However, we consider that the impact of these discrepancies is not material and therefore cost data as presented is reasonable for the purpose of assessing the economic condition of the industry.

3.6 Conclusion – Australian industry

Based on the information in the application, we consider that there is an Australian industry producing like goods to the goods subject to the application. We also consider that the data contained in the application is sufficient for the purpose of analysing the economic condition of the industry since 1 July 2005.

4 Reasonable grounds for the publication of a dumping duty notice – economic condition of the industry

4.1 The applicant's claims

The applicant claims that the allegedly dumped exports of GCLs from Germany have caused material injury in the form of:

- lost sales volume - lost sales volume commenced in March and April 2008 with the loss of two contracts in Western Australia (WA) to the German product. It is understood by the applicant that additional imports of German product were made during 2007/08 (the applicant claims that imports from Germany accounted for between 35,000 and 65,000 square metres in 2007/08);
- lost market share - the two lost contracts in WA account for approximately three and a half percent of the 2007/08 Australian market for GCLs;
- price undercutting - price undercutting commenced from the beginning of 2008. German imports have been at prices which have undercut the Australian industry selling prices by up to 20 percent;
- price depression - following the loss of the two contracts in WA, further injury followed in 2008 due to imported German product being offered on the market at a price which has forced Geofabrics to reduce selling prices to secure volume;
- price suppression - the applicant claims that cost increases apparent for the X1000 grade (grade with highest volume of sales) have not been offset by price increases in the market. The emergence of German exports at dumped prices has prevented Geofabrics from increasing its prices to recover increases in raw material costs incurred in 2007/08;
- reduced profits and profitability - the decline in domestic sales volumes and the inability to raise selling prices to recover increases in costs associated with the X1000 grade have contributed to reductions in profits and profitability for Geofabrics;
- other economic factors - the applicant claims it has experienced injury across certain other economic factors as a consequence of the dumped exports, namely:
 - o reduced return on investment. The applicant claims that Elco has experienced rapid declines in return on investment in 2007/08 and the first quarter of 2008/09 as a direct consequence of price undercutting by dumped imports;
 - o reduced capacity utilisation;
 - o reduced attractiveness to reinvest. The applicant claims that the rapid declines in return on investment in 2007/08 and the first quarter of 2008/09 has prevented further investment in Elco for the purpose of improving GCL productivity;
 - o reduced employment;

- reduced sales revenue. The applicant claims that Geofabrics has experienced a reduction in domestic revenues for GCLs in 2007/08 due to the loss of the two contracts in WA to German imports and the forced reductions in price to secure other contracts;
- increase in inventory levels. The applicant claims that Elco's stock levels increased significantly in 2007/08 due to the loss of the two WA contracts to German imports; and
- additional economic factors i.e. assets, capital investment, research and development, productivity, cash flow and wages. The applicant provided some data in respect of these factors.

4.2 Commencement of material injury

The applicant claims that material injury attributable to dumped exports of GCLs from Germany commenced from 1 January 2008. The applicant claims that injurious prices and volumes were not apparent in 2007 and therefore 2007 should not be considered as part of the investigation period.

For the purpose of this consideration report, we have examined the period from 1 July 2005 to 30 September 2008 for injury analysis purposes.

4.3 Approach to injury analysis

The financial data supplied in the application covers the financial years 2005/06, 2006/07 and 2007/08 and the first quarter of 2008/09. We consider it may be misleading to extrapolate the results of one quarter to estimate results for a full year. Therefore, in the following analysis of the applicant's financial data, we have only shown results for the first quarter of 2008/09 financial year where it is meaningful in the context of the data shown for the preceding three financial years, i.e. where that data relates to unit amounts and percentages. However, where that data relates to totals pertaining to a year, we have not annualised the results for the quarter to show an estimate for 2008/09.

The applicant provided financial data separately in relation to Geofabrics and Elco. The following analyses that pertain to domestic sales have been based on, and presented for, Geofabrics because this entity makes the domestic sales of GCLs produced by Elco. We have conducted similar analyses for Elco domestic sales data (i.e. to Geofabrics) and compared the trends to Geofabrics. We consider this comparative analysis supports the view that the Geofabrics data is a reasonable basis for assessment of the economic condition of the industry.

However, an investigation will need to assess whether the transactions between Elco and Geofabrics are arms length and to what extent, if at all, the relationship between these entities affects any analysis of the economic condition of the industry.

4.4 Volume effects

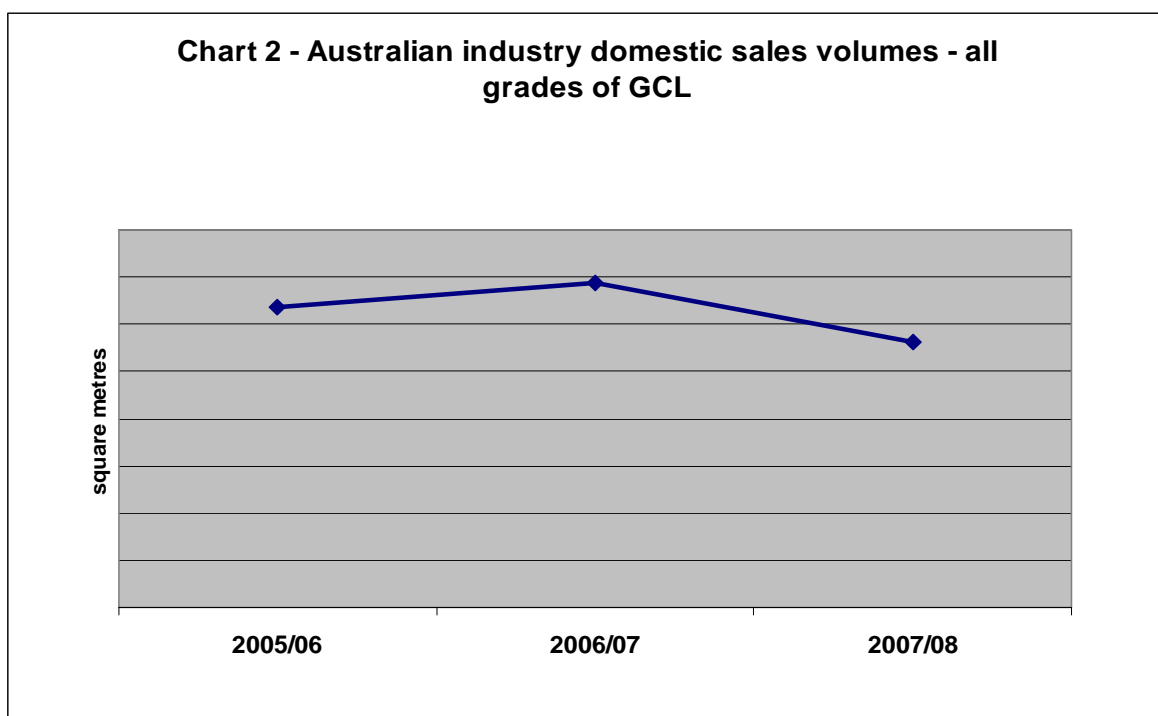
4.4.1 Lost sales volume

The applicant claims:

- loss of sales volume to German imports in relation to the following lost contracts tendered in 2007/08 and 2008/09:
 - o South Cardup landfill project (WA) – March 2008;
 - o Boddington Gold Mine project (WA) – April 2008;
 - o Cobram Landfill project (NSW) – October 2008;
- an additional volume (estimated) of the goods the subject of the application that were allegedly imported during 2007/08 and the first quarter of 2008/09 for unspecified applications;
- decline in overall production volumes in 2007/08 (see production data provided in **Confidential Appendix A6**); and
- reduction in sales of GCLs on both the domestic and export markets in 2007/08 (sales data provided in **Confidential Appendix A3**).

In support of its claims of lost sales volume, the applicant provided evidence in the form of sales data in **Confidential Appendices A2, A3 and A6**; an indexed table of sales quantities; and a project summary and intelligence reports at **Confidential Attachment A-9.2**.

The following chart shows the movement of total GCL sales volume for the applicant for domestic sales from 2005/06 to 2007/08.



Our examination of the Australian industry domestic sales volume data for the period 2005/06 to 2007/08 indicates that total sales volume of all grades of GCL sold domestically by the applicant increased from 2005/06 to 2006/07, then declined in 2007/08 to a point lower than in 2005/06.

Conclusion – lost sales volume

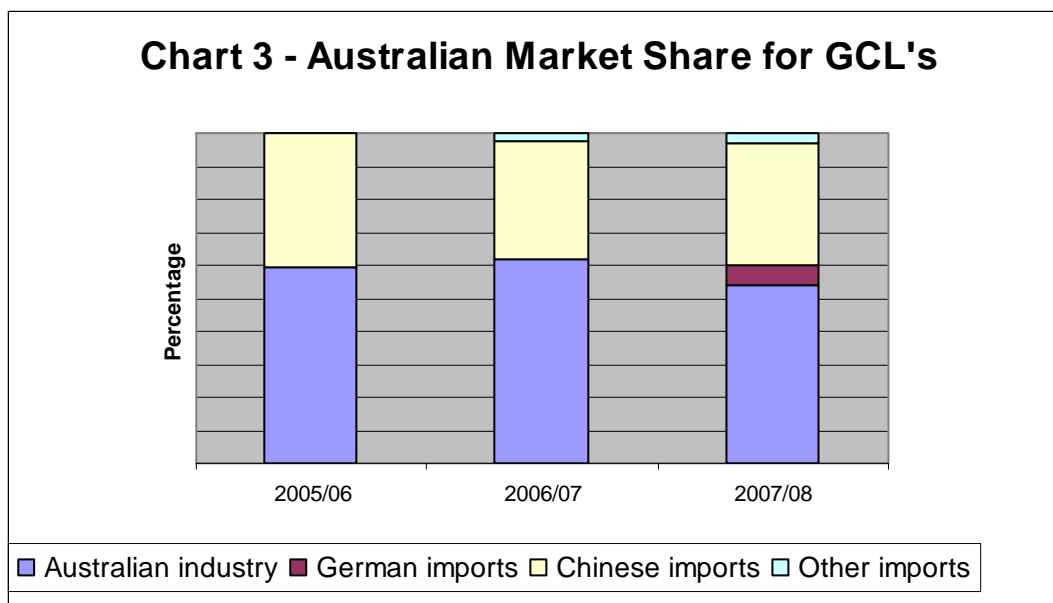
Based on the information contained in the application, we are satisfied there is evidence that the Australian industry has lost sales volume during 2007/08.

4.4.2 Lost market share

The applicant claims that:

- the two contracts lost in WA account for approximately 3.5 percent of the 2007/08 Australian market for GCLs; and
- German exports have captured a minimum eight percent and up to 13.5 percent of total import volume (**Confidential Attachment A-9.5.1**).

The applicant provided an estimate of market share in **Confidential Appendix A2**. Market share based on the applicant's estimation of volume is shown in the following chart.



Our analysis of the data indicates that the

- Australian industry's market share increased from 2005/06 to 2006/07 and then decreased in 2007/08 to a point below that achieved in 2005/06;
- German imports captured market share in 2007/08;
- market share held by Chinese imports remained relatively stable in 2007/08; and
- imports from other sources emerged in 2006/07 and maintained a relatively stable (and small) market share in 2007/08.

Conclusion – lost market share

Based on the information contained in the application and Customs import database, we are satisfied there is evidence that the Australian industry has lost market share over the injury analysis period.

4.5 Price effects

Price effects may be in the form of:

- price undercutting, which occurs when imported product is sold at a price below that of the Australian manufactured product;
- price depression, which occurs when a company, for some reason, lowers its prices; and/or
- price suppression, which occurs when price increases for the Australian industry's product, which otherwise would have occurred, have been prevented.

4.5.1 Price undercutting

The applicant claims that with effect 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 of price undercutting, the applicant provided evidence in the form of project summaries and intelligence reports at **Confidential Attachment A-9.2** in relation to the following contracts tendered in 2007/08 and 2008/09 that were allegedly lost to German imports:

- the South Cardup project – March 2008;
- the Boddington Gold Mine project – April 2008; and
- the Cobram Landfill project - October 2008.

Conclusion – price undercutting

Based on the information contained in the application we are satisfied there is evidence that the applicant's selling prices have been undercut by imports of GCLs from Germany.

4.5.2 Price depression

The applicant claims that:

- imported German product continues to be offered on the Australian market which requires the applicant to reduce selling prices to secure volume;
- as a significant proportion of 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 have created a new, lower level of price expectation - evidenced through the successive contracts for which the applicant is competing with German GCLs.

In support of its claims of price depression, the applicant provided evidence in the form of sales data in **Confidential Appendices A2, A3, A4 and A6**; indexed table of sales values; and a project summary and intelligence reports at **Confidential Attachment A-9.2**. In relation to particular contracts tendered in 2007/08 and 2008/09, the applicant provided evidence concerning the following projects to demonstrate price depression:

- the Woodford Is project (June 2008): the applicant claims it offered two grades of Elcoseal at certain prices but was forced to reduce its prices for both grades in order to win the contract against 'aggressive' promotion from Global; and
- the WERM Landfill project (August 2008): the applicant claims that after reducing its price it was awarded the contract over Global.

Our analysis of the data indicates that the weighted average price of all grades of GCL sold in the domestic market by the applicant increased from 2005/06 to 2006/07 and then decreased in 2007/08 and again in the first quarter of 2008/09.

We note that the applicant claims that injury commenced in March 2008 with the first sales of German GCLs on the Australian market and the data is for a full financial year.

The trend in weighted average unit selling prices for all GCLs sold domestically by the applicant in the injury analysis period can be observed in Chart 4 in the following section.

Conclusion – price depression

Based on the information contained in the application, we are satisfied there is evidence that the applicant has experienced price depression.

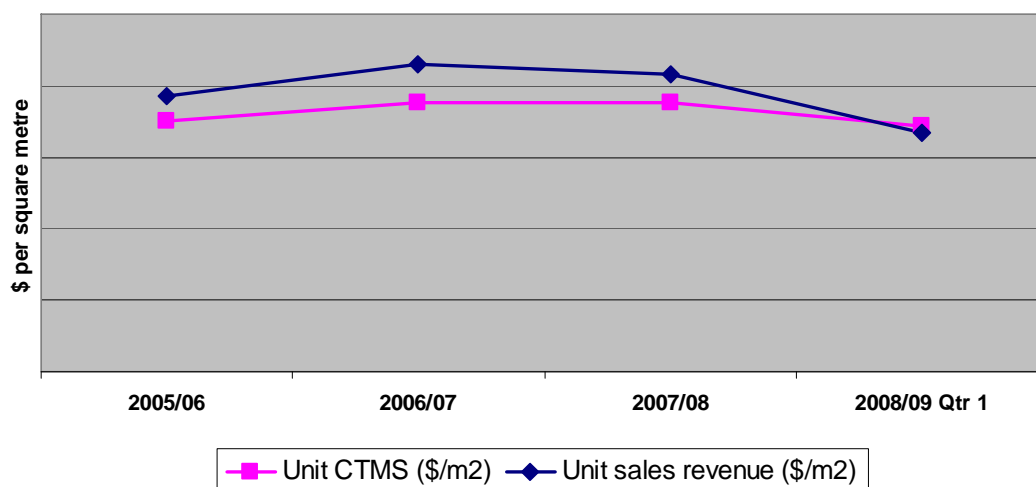
4.5.3 Price suppression

The application includes CTMS data for domestic sales of each major grade of GCL in **Confidential Appendix 6.1** presented separately for Elco and Geofabrics. The application also includes indexed tables of cost and price variations for the period 2005/06 to the first quarter of 2008/09.

The applicant claims that the cost increases for Elcoseal X1000, the highest volume grade, have not been offset by price increases in the market. The 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.

The trends in weighted average unit CTMS and weighted average unit selling price for all grades of GCL sold domestically by the applicant over the injury analysis period are shown in the chart below.

**Chart 4 - Australian industry CTMS & prices - Domestic sales
All grades**



Based on analysis of the data we found the weighted average unit CTMS for all GCLs sold domestically by the applicant increased from 2005/06 to 2006/07 and then again in 2007/08 and then declined in 2008/09. At the same time, the weighted average unit selling price for all grades of GCL sold domestically increased from 2005/06 to 2006/07 then decreased in 2007/08 and again in the first quarter of 2008/09.

Conclusion – price suppression

Based on the information contained in the application we are satisfied there is evidence that the applicant has experienced price suppression.

4.6 Profit effects

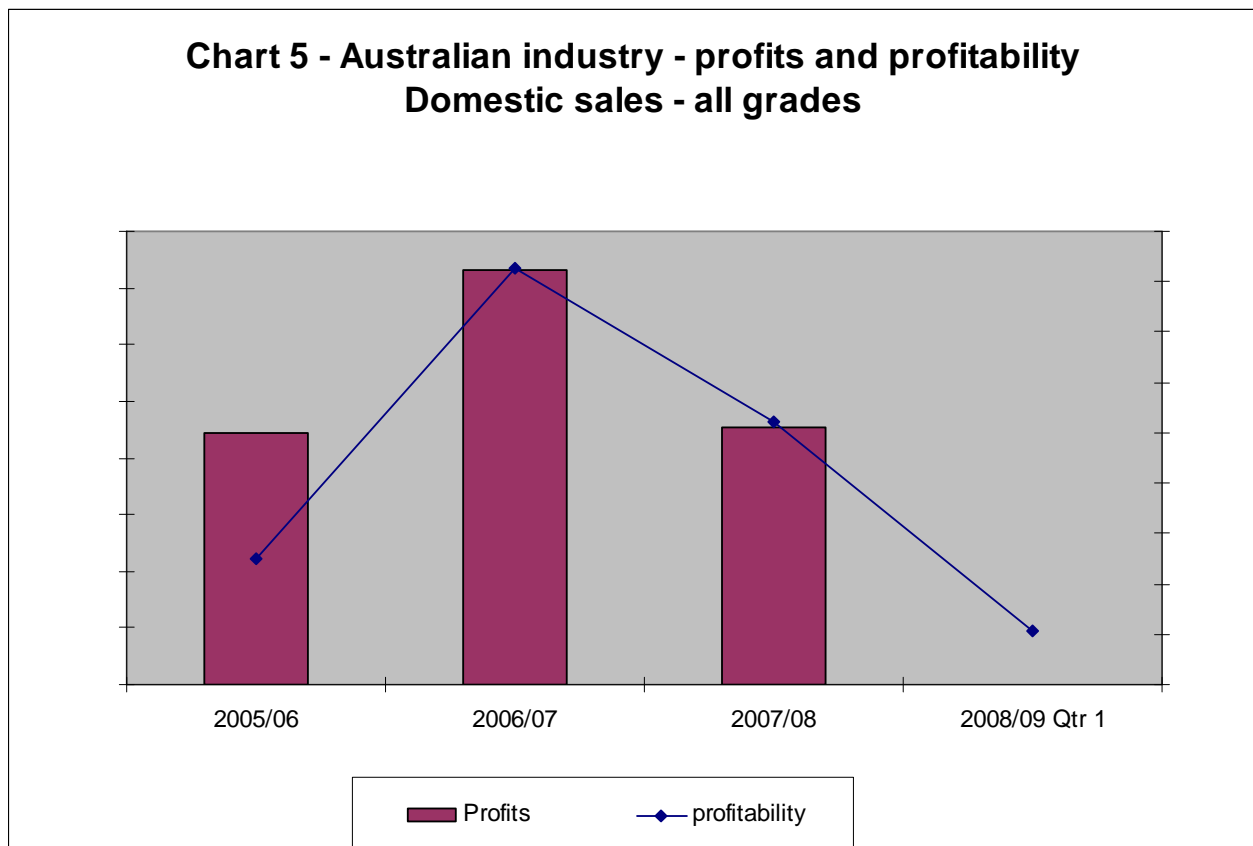
The applicant claims that the decline in domestic sales volumes and the inability to raise selling prices to recover increased costs, particularly associated with the grade X1000, has contributed to reductions in profits and profitability for Geofabrics. The applicant claims that the longer term impact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

The applicant supported its claims of reduced profits and profitability with reference to the following projects:

- South Cardup project – supply contract lost to German imports;
- Boddington Gold Mine project – supply contract lost to German imports;
- Woodford Is project – reduced revenue and profits after price pressure from German imports;
- WERM project – reduced revenue and profits after price pressure from German imports; and
- Cobram project – supply contract lost to German imports.

The applicant further support its claims of lost/reduced profits and profitability with evidence in the form of profit and profitability data for each grade of GCL manufactured by the applicant in **Confidential Appendix A6**; and indexed tables of profit and profitability variations for the period 2005/06 to the first quarter of 2008/09.

The following chart shows the movements in profits and profitability over the injury analysis period.



We note that the profitability trend in the chart above may not appear to correlate to the data presented in Chart 4. However, this is because the X-axis in Chart 5 does not cross the right-side (profitability) Y-axis at zero.

Based on analysis of the data we found:

- total profits from the applicant's domestic sales of GCLs, and the profitability on those sales, increased from 2005/06 to 2006/07 and then decreased in 2007/08; and
- the profitability in relation to domestic sales of all grades of GCL by the applicant decreased again in 2008/09 to a point that is lower than each prior period.

Conclusion – profit and profitability

Based on the information contained in the application, we consider there is evidence that the applicant has experienced reduced profits and profitability.

4.7 Other economic factors

The application includes data on other economic factors in **Confidential Appendix A7** and indexed tables of domestic revenue, capacity utilisation, employment, stock level and return on investment variations.

4.7.1 Reduced sales revenue

The applicant claims that it has lost domestic revenues for GCLs in 2007/08 and the first quarter of 2008/09 in relation to the following projects:

- South Cardup project;
- Boddington Gold Mine project; and
- Cobram project.

The applicant also claims that it has experienced reduced domestic revenues for GCLs in 2007/08 and the first quarter of 2008/09 in relation to the following projects:

- Woodford Is project; and
- WERM landfill project.

Based on analysis of the information contained in the application we consider that the applicant has lost revenue in relation to sales of all grades of GCLs in 2007/08.

4.7.2 Reduced capacity utilisation

The applicant claims Elco's utilisation capacity reduced in 2007/08 and the first quarter of 2008/09.

Based on an analysis of the information contained in the application we consider that the applicant experienced a reduction in capacity utilisation in 2007/08 but capacity utilisation still remains at a level above that in 2005/06.

4.7.3 Reduced employment

The applicant claims that it has reduced its production down from two shifts in 2006/07 to a single shift in 2007/08 and 2008/09 due to lost sales volumes to dumped German imported product.

Based on an analysis of the information contained in the application we consider that the applicant experienced reduced employment in 2007/08 but the employment level remains at a higher level than 2005/06.

4.7.4 Increase in inventory levels

The applicant claims that Elco's stock levels increased significantly in 2007/08 due to the loss of the two WA contracts to German imports.

Based on an analysis of the information contained in the application we consider that stock levels increased in 2007/08 from a low level in 2006/07 to a level significantly higher than in 2005/06.

4.7.5 Reduced return on investment

The applicant claims that Elco has experienced rapid declines in return on investment in 2007/08 and the first quarter of 2008/09 as a direct consequence of severe price undercutting by Global.

Based on an analysis of the information contained in the application we consider that the applicant has experienced a downturn in return on investment since 2005/06.

4.7.6 Other factors

Assets

The data in **Confidential Appendix 7** indicates value of assets used in the production of GCLs has reduced in 2006/07 and again in 2007/08.

Capital investment

The data in **Confidential Appendix 7** indicates an increase in capital investment in the production of GCLs.

Research and Development (R & D)

The data in **Confidential Appendix 7** indicates an increase in expenditure on R & D on GCLs.

Productivity

The applicant did not include any data on productivity in **Confidential Appendix 7**.

Cash flow measures

The data in **Confidential Appendix 7** indicates a decrease in accounts receivable in 2007/08 compared to 2006/07.

Wages

The data in **Confidential Appendix 7** indicates an increase in the wages bill for GCLs in 2006/07 followed by a decrease in 2007/08.

4.8 Conclusion – economic condition of the industry

Based on an analysis of the information contained in the application we consider that the applicant has experienced injury.

5 Reasonable grounds for the publication of a dumping duty notice – Dumping

5.1 General

5.1.1 Exporter/Importer

The applicant identifies one producer/exporter of GCLs from Germany:

Naue GmbH & Co. KG
Gewerbestrasse 2
32339 espelkamp – Fiestel
Germany
Tel: +49 57 43-41-0
Fax: +49 57 43-41-240

The applicant identifies one importer of the goods manufactured by Naue:

Global Synthetics Pty Ltd
8/28 Oramzi Road
Girraween, NSW 2145
Tel: (02) 9631 0744
Fax: (02) 9631 0755

5.1.2 Analysis period

We examined the period January to September 2008 to assess whether the applicant's claims in relation to dumping were reasonable.

5.1.3 Import volumes

Subsection 269TDA(4) requires that the total volume of the goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped is taken to be a negligible volume if, when expressed as a percentage of the total Australian import volume, it is less than 3%.

The applicant estimates that in 2007/08 approximately 483,000m² of GCLs were imported to Australia. Of that total volume, the applicant estimates that dumped imports from Germany accounted for between 35,000 and 65,000m² or between 7.7 and 13.5 percent of total import volumes of the goods.

We note that the percentage of dumped imports of total imports would be higher if the volume of total imports was based on the dumping analysis period of January to September 2008 rather than the 2007/08 financial year.

Conclusion

Based on available evidence, we consider that the volume of GCLs exported from Germany in 2007/08 was greater than 3% of the total import volume.

5.2 Export price

In estimating the export price of the goods exported to Australia from Germany, the applicant has calculated deductive export prices for two grades of GCLs imported by Global, namely NSP4300 and BFG5000.

We note that the applicant claims that these grades were supplied by Global to the Boddington Gold Mine and South Cardup Landfill projects. The other grade claimed to be imported from Germany by Global in 2007/08 and 2008/09 is NSP 4900, which was allegedly supplied to the Cobram Landfill project.

The applicant determined deductive export prices at the Free On Board (FOB) level. The application includes supporting documentation for deductive export price calculations at **Confidential Appendix B1**.

The applicant states that the selling prices in Australia of German GCLs, that were used as the starting point in the deductive export price calculations, are a delivered price free-into-store. The applicant then made deductions for:

- estimated importer margin;
- sea freight;
- Australian inland freight and charges;
- clearing charges; and
- customs duty.

We note that no supporting information was provided for the estimate of Australian inland freight and charges. However, we consider the information lodged in support of these charges and the other amounts used for deductions in calculating deductive export prices to be reasonable.

We used the data contained in the Customs import database to calculate indicative export prices. Precise unit export price calculations (per square metre) were not possible because quantity measured in square metres is not a mandatory information field when entering the goods for home consumption. However, by making use of declared weights in kilograms and the known weight of GCLs per square metre, we were able to deduce export price estimates per square metre. Our calculations indicated the applicant's deductive export prices were not unreasonable.

Conclusion

Based on the information contained in the application and the data contained in the Customs import database we consider that the applicant's assessment of export prices is reasonable.

5.3 Normal value

5.3.1 Selling price in the exporter's domestic market

The applicant obtained domestic selling prices for GCLs sold in Germany and states that the prices quoted were supplied in response to customer inquiries made to Naue. The application includes a copy of a written quote for Bentofix NSP4900 and other quotes for NSP 4000, NSP 4900 and BFG 5000 grades in **Confidential Attachment B-3.1**. The terms of the quotes are delivered into store, net 30 days.

We note that the applicant has established normal values for BFG 5000 and NSP 4900 grades and compared these to deductive export prices for BFG 5000 and NSP 4300 grades.

We note that the applicant did not obtain a domestic selling price for NSP 4300 in Germany. The applicant claims that it is reasonable to compare a deductive export price for NSP 4300 with an established normal value for NSP 4900 as there are 'only slight specification differences'.

Conclusion

Based on an analysis of the information contained in the application we consider that the applicant's assessment of normal values is reasonable.

5.3.2 Selling price in the exporter's domestic market using another method

The applicant did not provide an estimate of normal value using another method.

5.4 Adjustments

The applicant considers that no adjustments to the domestic selling price of the goods sold in Germany for domestic inland freight are necessary, as German inland freight components for domestic and export sales are not readily available and in any case these values are not considered to be materially different.

Conclusion

We accept that the inland freight associated with domestic and export sales may not be materially different on a per unit basis and therefore consider it reasonable not to adjust the normal values for possible differences in inland freight charges. In relation to port handling and FOB charges in Germany, we note that the applicant has not estimated an amount for these charges but we consider that this would only have served to increase the estimated normal values and thereby increase the resulting dumping margins. We also note that no adjustment has been made for specification differences in relation to differences between the grades NSP4300 and NSP4900. We consider any adjustments in these respects would not significantly affect the resulting dumping margins.

5.5 Dumping margin

The application includes a comparison of export price and normal value for two grades of GCL exported by Naue to Australia, namely NSP4300 and BFG5000. The applicant has calculated dumping margins ranging from 11% to 76%. The dumping margins were calculated by subtracting deductive export prices for NSP4300 and BFG5000 from normal values for NSP4900 and BFG5000 respectively.

Conclusion

We have examined the data for accuracy and reasonableness and our assessment indicates that the dumping margins are not negligible.

5.6 Conclusion

Based on an analysis of the information contained in the application we consider that the applicant's claim that the goods have been exported to Australia from Germany at dumped prices is reasonable.

6 Reasonable grounds for the publication of a dumping duty notice - Causal link

6.1 Causal link

6.1.1 The Applicant's claims

The applicant states that there is a causal link between material injury and dumped imports. In support of its case, the applicant claims that:

Lost volume

- exports of dumped GCLs from Germany commenced in 2007/08;
- the emergence of the 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 WA. The volume associated with the two known contracts, together with an estimate of other imports of German GCLs, have captured a minimum of 8 percent of total import volume;
- the two lost WA contracts account for approximately 3.5 percent of the 2007/08 Australian market for GCLs;
- the applicant was notified in October 2008 that it was unsuccessful in its bid to supply GCLs for the Cobram landfill facility against a bid from Global; and
- Global is targeting the higher volume contracts to which Geofabrics supplies its two major grades of GCL. German imports are likely to extend beyond these grades as further volumes are secured.

Reduced pricing

- in respect to the two lost WA contracts, despite a 21 percent price reduction at the first contract, the applicant failed to secure the contract against the successful tender price of Global (see **Confidential Appendix A-9.2**). At the second contract, the applicant's bid was once again undercut by Global's bid;
- at a third contract in WA, the applicant is experiencing price undercutting by Global. The outcome of the tendering process is yet to be announced;
- in June 2008 the applicant was forced to reduce its price for two grades of GCL to secure a contract at Woodford Is against Global (see **Confidential Attachment A-9.2**). The applicant claims that this was in response to "aggressive" promotion from Global; and
- the applicant understands that in August 2008, it was awarded the WERM landfill contract against Global having once again being forced to reduce its price in response to price undercutting by Global.

Reduced profits and profitability

- the applicant has experienced an increase in its CTMS for the goods during 2007/08, particularly in its two major grades. The supply to the Australian market of German exports of GCLs at dumped prices has prevented the applicant from increasing its selling prices of GCLs to recover raw material

cost increases in 2007/08. This has resulted in reduced profits and profitability; and

- in particular, the applicant has experienced reduced profits in relation to the following projects:
 - o South Cardup project;
 - o Boddington Gold Mine project;
 - o Woodford Is project;
 - o WERM project; and
 - o Cobram project.

6.1.2 Assessment

Our examination of the information contained within the application, and other relevant information, indicates evidence of:

- the presence of dumped goods in the Australian market:
 - o imports from Germany of GCLs commenced in 2008;
 - o GCLs from Germany are entering the Australian market at dumped prices;
- price undercutting:
 - o contracts in WA in March and April 2008 were awarded to the suppliers of the German GCLs at prices that undercut those of the applicant;
 - o subsequent contracts that have been awarded to the applicant have been at prices below the original tender price, and the price reduction appears to be attributable to competition from German GCLs;
- price depression:
 - o competition for supply of GCLs at the WERM project and the Woodford Is project appears to be such that the price of dumped GCLs from Germany has forced the applicant to lower its prices;
- price suppression:
 - o production costs in Australia have been steadily increasing primarily due to the rising cost of one of the major raw material, polypropylene, and fuel surcharges;
 - o the price decreased in 2007/08 while unit CTMS increased; and
 - o the price decreased in the first quarter of 2008/09 at a faster rate than the decrease in CTMS to a point where price was less than CTMS;
- volume effects:
 - o the overall market size appears to have declined in 2007/08;
 - o applicant's sales volume declined in 2007/08 by a greater amount than the decline in the market size;
 - o exports of German GCLs to Australia commenced capturing market share in 2008;

- exports of Chinese GCLs to Australia have maintained a relatively stable share of the market throughout the injury analysis period;
 - exports of GCLs from other countries to Australia commenced in 2006/07 and remained at a relatively low volume;
 - lost volume has impacted on capacity utilisation and increased the applicant's unit CTMS;
 - imported German GCLs are continuing to be offered for supply to contracts being tendered in 2008/09 which may further reduce the applicant's market share; and
- reduced profits and profitability
 - the applicant has experienced reduced profits and profitability due to its competition with dumped GCLs from Germany, particularly at the major projects identified in the application; and
 - current low tender prices may influence future tender prices and hence the applicant's ability to improve profits/ profitability.

Conclusion

We consider the price and volume effects from price undercutting and the consequent reduced revenues, profits and profitability amount to injury caused by the alleged dumping. We are of the view that while other factors may have contributed to injury to the Australian industry, we consider the applicant has demonstrated that dumping, of itself, has caused injury.

Materiality

The applicant claims that:

- the extent of the injury sustained so far is significant when taken in the context of the short period of time over which the injury has occurred. The two lost contracts in WA when contrasted with total volumes in the January to June 2008 period, represent approximately 20 percent of the Australian market. A further contract for a landfill at Cobram in 2008/09 has also been lost to dumped imports;
- Global's strategy to significantly undercut prices offered by the applicant by levels up to 20 percent to secure significant volumes represent material damage to the Australian industry; and
- 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 two lost contracts in WA represent a significant proportion of the applicant's GCL 2007/08 turnover. In addition, the loss of the Cobram contract, and the price reductions at the WERM landfill and Woodford Is projects, also represent significant losses in revenue and profits to the applicant.

We examined the information provided in relation to the contracts where German GCLs were supplied, and also those where the applicant reduced prices to respond to competition from the German GCLs. We consider that the circumstances surrounding the awarding of these contracts to be satisfactory evidence of price undercutting, price

depression, price suppression, lost sales volume and lost market share caused by the alleged dumping of German GCLs. We consider that the reduced sales revenue and the loss of potential profits associated with these contracts, when considered in aggregate, is not insignificant.

6.2 Factors other than dumping affecting economic performance

6.2.1 Export sales

The applicant provided CTMS data for export sales by Elco and Geofabrics in **Confidential Appendix A-6.2** for grades X1000, X2000, X800, other grades and all grades for 2005/06, 2006/07 and 2007/08.

We noted the applicant's export sales comprised a significant part of its GCL business until 2007/08. However, we have been careful to isolate the effects of export performance from injury the applicant attributes to dumping.

6.2.2 GCLs imported from China

GCLs imported from China have maintained a significant market share throughout the injury analysis period. Information contained in the application indicated that importers of GCLs from China are competing with the applicant for Australian GCL supply contracts, although we note the applicant's claim that a significant proportion of Chinese GCLs is sold into the building and construction market as basement liners (a market the applicant claims not to have a strong market presence). The applicant also claims that Chinese GCLs are sold at a similar price to GCLs manufactured by the Australian industry.

6.2.3 Substitutable products

The applicant states that GCLs may be substituted by other products.

We expect that an investigation will consider the affect of these factors and other matters identified during the investigation on the economic performance of the Australian industry.

6.3 Conclusion

We consider the applicant has provided reasonable grounds for alleging that GCLs exported from Germany at dumped prices have caused material injury to the Australian industry producing like goods.

7 Supplementary items

7.1 Subsidy

The application is not an application for countervailing duties.

7.2 Threat of material injury

We note the applicant states “This application does not rely solely on the threat of material injury from dumped exports of GCLs from Germany” and it further states “Material injury to the Australian industry manufacturing GCLs is expected to escalate in the absence of anti-dumping measures.”

We consider the first statement suggests the application relies in part on the threat of material injury, and the second statement appears to be a claim in relation to ‘continuation of material injury’ rather than the ‘threat of material injury’. We therefore consider it necessary to outline the concept of, and tests related to, threat of material injury.

Clarifying the concept – *threat of material injury*

Customs advised interested parties in another anti-dumping investigation its view that *threat of material injury* and *continuation of material injury* are not the same.

Customs advised that continuing material injury relates to circumstances where the dumping has caused material injury, and the dumping and that material injury is likely to continue. It is a prospective analysis that the present dumping and the present material injury will carry forward into the future.

Threat of material injury, on the other hand, arises in circumstances where the dumping is causing either no present injury, or is causing negligible present injury, but there is a future threat of material injury.

Tests involved in a determination of threat of material injury

The WTO Anti-Dumping Agreement and the Australian legislation provide for a determination of threat of material injury to be subject to stringent tests.

Article 3.7 of the WTO Anti-Dumping Agreement provides that a determination of a threat of material injury must be based on facts and not merely on allegation, conjecture or remote possibility. It also provides a non-exhaustive list of factors that should be considered and notes that no one factor can necessarily give decisive guidance. A totality of factors must lead to a determination of threat of material injury.

Article 3.8 of the WTO Anti-Dumping Agreement provides that:

“With respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be considered and decided with special care.”

The Australian legislation, at s. 269TAE(2B), provides that in determining whether or not material injury is threatened to an Australian industry:

“...the Minister must take account of only such **change in circumstances**, including changes of a kind determined by the Minister, as would **make that injury foreseeable and imminent** unless dumping or countervailing measures were imposed” (emphasis added).

We note that if an investigation finds dumping margins that are not negligible, but finds that dumping did not cause material injury, Customs may consider examining the issue of whether dumping threatened material injury. However, we consider that the applicant in this case has not, at this stage, provided sufficient relevant information in the application to support a claim of threat of material injury.

7.3 Close processed agricultural goods

The applicant does not consider GCLs to be close processed agricultural goods.

7.4 Exports from a non-market economy

The applicant states that Germany is not considered to be a non-market economy under Australia’s anti-dumping and countervailing provisions.

7.5 Exports from an ‘economy in transition’

The applicant states that Germany is not considered to be an economy in transition under Australia’s anti-dumping and countervailing provisions.

7.6 Aggregation of volumes of dumped goods

The application is made in respect of GCLs exported from Germany only.

8 Comparison of export price and non injurious price

8.1 Calculation of USP/NIP

Unsuppressed Selling Price (USP) and Non-Injurious Price (NIP) issues are examined at an early stage of an investigation and, where possible and appropriate, preliminary examinations are made during the application consideration period for the purpose of assessing injury and causal link.

Customs 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 USP.

Customs' preferred approach to establishing USPs observes the following hierarchy:

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

Having calculated the USP, Customs 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.

The applicant has not provided USP or NIP estimates. We note this is not required by the application form. However, we consider it appropriate to compare the alleged dumped deductive export prices to NIP estimates. If the deductive export prices are greater than the NIP, it would suggest that dumping may not be causing material injury. If, on the other hand, the deductive export prices are lower than the NIP, this would support a finding that dumped imports have caused material injury to the Australian industry producing like goods.

In the case of GCLs, and in the context of the alleged claim that injury commenced in 2008, we have established USPs based on the applicant's selling prices in 2006/07. The NIP has been calculated by deducting from the USP amounts for overseas freight; landing, clearing (including Customs duty) and freight charges in Australia; and an estimate of the Australian importer's gross margin. We used the amounts provided by the applicant in respect of the deductive export price.

We calculated two NIPs, one each for the German GCL grades exported to Australia in relation to the two lost WA contracts. In each case, we noted that the export price was lower than the NIP, thereby supporting our view that the applicant has reasonably demonstrated that German GCLs exported to Australia at dumped prices has caused material injury to the Australian industry producing like goods.

9 CONCLUSION

We have examined the application and other information considered relevant, and we consider that:

- the application complies with subsection 269TB(4);
- there is an Australian industry in respect of like goods; and
- there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application.

Accordingly, we recommend that you as delegate of the CEO not reject the application for the publication of a dumping duty notice under subsection 269TB(1).

For the purposes of the investigation we recommend that:

- the investigation period to determine whether dumping has occurred be from 1 January 2008 to 31 December 2008; and
- Customs examine the Australian market and the economic condition of the industry from 1 July 2005 for the purposes of injury analysis.

David Turner
Operations 3
24 December 2008

Andrea Stone
Operations 3
24 December 2008

10 CONFIDENTIAL ATTACHMENTS

10.1 Australian market & market share

10.2 Australian industry domestic sales volumes

10.3 Australian industry domestic cost to make & sell and prices

10.4 Australian industry domestic profits & profitability

10.5 NIP estimates and comparison with export prices