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Australia's anti-dumping system
Productivity Commission
GPO Box 1428
Canberra City
ACT 2601

Dear Commissioners,

Submission – Australia's Anti-dumping and Countervailing System

Enclosed for your consideration is our submission.

In December 2008 we lodged an application for anti dumping measures on behalf of ourselves and our wholly owned subsidiary, Elco Solutions Pty Limited.

The investigation has continued and on 8 May 2009, Australian Customs issued a Preliminary Affirmative Determination and Imposition of Securities Notice. At the date of this submission, the Minister had still to make a decision regarding the imposition of measures. Given the magnitude of the dumping margins, we are hopeful of an outcome which is favourable to us.

This submission is based on our experience through this process. The background to our submission and the process followed is outlined in Attachment 1. Accordingly, we are unable to comment on all aspects covered by the Commission and will deal with our specific issues.

Decline in usage of Australia's anti-dumping system

The products which formed the subject of our application fall under the broad category of "technical textiles" and enjoy a nominal level of tariff protection at the rate of 5%. Other technical textile products manufactured by us fall under the same low level of protection.

We have seen increased competition, particularly over the past three years, at prices which we firmly believe are dumped prices. We have been reluctant to use the anti-dumping system for the following reasons:

- a) Anecdotal evidence from industry sources to the effect that "applications are never successful".

- b) Difficulty in obtaining import statistics covering the products concerned. This is made more difficult by the products in question bearing no evidence of their country of manufacture.
- c) The complexity of the process and the documentation required.
- d) Difficulty in obtaining evidence of dumped prices in the domestic market and more so, prices of those goods in the exporter's home market.
- e) The cost of instituting and following through with an application is high in terms of employee time.

In our case, we chose to make use of a consultant. His guidance, which started with a review of our prima facie case, was invaluable. He was able to assess our case, advise us about the process and take us through each stage.

Concentration by industry and supplier source

Our products fall within the broader "technical textile" description and it is in that industry sector that we see signs of dumping.

However, with regard to the supplier sources, the regions are spread widely. Our recent application was against a German company for a specific geosynthetic product.

We have evidence that between 2003 and 2006, other geosynthetic products (differing from those in our application) were dumped in the Australian market. We also see these other geosynthetic products from China, Thailand and Korea entering the local market at well below international prices. It is of interest that these same countries which are the source of dumped product have significant tariff protection in their domestic markets.

Predatory behaviour

Customs are limited to the investigation of dumping into Australia.

It is conceivable that a foreign competitor, in seeking to damage an Australian manufacturer, may not only attack the Australian market with dumped goods but also dump products into export markets in which the Australian manufacturer operates.

This predatory behaviour would therefore harm the Australian manufacturer in a number of markets.

Customs are unable to investigate or take into account predatory behaviour of this type, notwithstanding the fact that it may be part of a co-ordinated strategy.

Where there is an apparent link between local dumping and predatory behaviour in export markets, Customs should be authorized to include it in their investigations.

The impact of Australia's anti-dumping system on our activities

Our manufacturing operations have invested significantly in research and development, capital equipment, human resources and process improvements. Our products are world competitive in terms of cost and quality. This is evidenced by our ability to compete domestically with very low tariff protection against "normal" pricing. However, we are unable to compete with products which are dumped into Australia at sub-economic prices by companies with significant financial resources.

For us to continue our investment in research and development and capital equipment, we must have the assurance that the integrity of WTO

arrangements will be maintained and that Customs will continue to enforce the anti-dumping measures.

This is also important to protect skilled Australian jobs within an industry which is internationally competitive. Once lost, these jobs would not be regained.

Application of a public interest test

The process we went through was analytical and objective. Arguments put forward by ourselves were supported by documentation and verifiable information. The process was subject to a rigorous investigative process by Customs.

We understand that the information provided by the importer and the German exporter was subject to the same level of verification.

It occurs to us that a public interest test would be far less objective and lean towards a subjective analysis. This view is taken in the light of the numerous other parties making up the "public" and the factors which may need to be considered.

In our case, these Australian parties and issues may include:

- i. The Australian customers using both our product and the imported product.
- ii. Australian manufacturers of alternative products who may also be impacted by dumping.
- iii. Our employees whose jobs would be at stake and their Union representatives.
- iv. The Australian Government which would be faced with the welfare and financial issues associated with redundancies.
- v. Our suppliers of raw materials, consumables and services who would see their business affected indirectly.
- vi. The impact of reduced research and development and the ultimate loss of skills due to the lack of similar opportunities.
- vii. The short term benefit of lower prices against the long term position where the Australian market is dominated by two large suppliers beyond the reach of the ACCC.

Presumably, the public interest test would require or accept input on the issues from these and any other parties who could claim an interest. The public interest would have to extend to economic, social and political implications and the fair assessment process would require specialist analysis of all these factors.

Far from streamlining and speeding the process, this could become a long and drawn out process to the detriment or possible demise of the local manufacturer. It may benefit the foreign exporter to prolong the process as far as possible.

Modifications to the architecture and administration of the system

As noted previously, we utilized the services of a consultant to assist us with an initial assessment of our application, completion of the documentation required and the whole submission process. We found the service invaluable and certainly have a much better understanding of the anti-dumping measures and the process.

We also note that the representatives from Customs were at all times accessible, courteous and helpful. Their questioning of our application, their

approach to the due diligence audit at our premises and their requests for clarification were handled in a professional manner.

From our experience, there are a number of aspects which we believe may be improved upon to assist the local manufacturer and these are:

a) An initial review process

For us contemplating an application, the amount of information to be provided, the evidence we were required to present and the process itself was an unknown challenge.

We believe it would be beneficial for a "Preliminary Questionnaire" to be produced by the local manufacturer for review by Customs as an initial step. That questionnaire would provide the bare bones of the case which could be discussed with Customs.

The manufacturer would then be required to discuss the questionnaire with Customs and during those discussions, he would be made aware of the process and the requirements. Customs, with their access to the import statistics, would be able to provide guidance.

The desired outcome would be for the manufacturer to have some idea of whether or not he had a case to proceed with.

We understand that this put Customs in a difficult position where its findings in a case may be different to the initial advice it gives the manufacturer.

b) Proof of material injury

Proof of material injury may require the local manufacturer to wait while his market is eroded, products are dumped and he has finally suffered a material injury. Notwithstanding the vagueness associated with the definition of "material", in some cases, this may be very damaging and happen quite quickly.

The concept of "threatened injury" if the dumping persists should also be considered and taken into account. This would allow the local manufacturer to establish the damage suffered and project its effect if the dumping continues.

c) Lost market share etc

The onus of proof in respect of the damage caused by the dumped product rests with the local manufacturer. They are therefore not only required to prove dumping but also establish a causal link. This causal link should be assessed in a more liberal way, with the balance of probability favouring the manufacturer.

Also, in the light of b) above, the probability of lost sales, lost market share, price suppression, lost profits and so on which would arise from a "threatened injury" should be assessed.

d) Time frames and interim action

The timeframe for an application which proceeds smoothly and without extension is some 155 days. This is a significant period of time during which the manufacturer is likely to continue suffering injury. Given the amount of work required to fully investigate a claim, it is difficult to see how the period can be shortened.

It is also possible for the exporter, knowing that he may suffer an adverse finding, to use this time period to deliver to the domestic market sufficient

product at prices which will continue to injure the manufacturer well into the future.

The manufacturer may well win the battle but lose the war.

We would propose that where an application is successful, the imposition of a dumping duty be retrospective to the date on which Customs advertises that it is initiating an investigation.

We trust the above submission is helpful in your deliberations. Should you wish to discuss this with us further, please contact us.

Yours faithfully,

Geofabrics Australasia Pty Limited

Bryan Macpherson
Director.

Attachment 1.

Geofabrics Australasia Pty Limited

Background information to the company, its operations and its application for anti-dumping measures

Introduction

Geofabrics Australasia Pty Limited (GA) manufactures, markets and sells a range of geosynthetic products manufactured at its plant at Albury in country NSW and markets and sells the products manufactured by its wholly owned subsidiary company Elco Solutions Pty Limited (Elcos) on the Gold Coast.

Products and markets

Elcos manufactures Geosynthetic Clay Liners (GCL's), a composite textile and clay product used for lining and waterproofing. The major markets include landfills, mining settlement ponds, basement waterproofing and agriculture.

There are a number of competing products, including imported GCL's from China and elsewhere, naturally occurring clays and membranes.

Manufacturing

The Elcos manufacturing plant is located at Molendinar on the Queensland Gold Coast where some 35 people are currently employed.

Between the year 2000 and 2008, Elcos utilized the benefits applicable under the original Textile Clothing & Footwear Strategic Investment Programme (TCF-SIP) and its successor programme to invest in capital machinery, process improvement and research and development, thereby ensuring that its products matched the best in the world in terms of quality, were internationally price competitive and were technologically advanced.

International competitiveness

The international GCL market is dominated by two large manufacturers – Naue GmbH & Co. KG of Germany and the American multi-national Cetco, part of the Amcol International Corp.

Notwithstanding the size and financial strength of these companies, Elcos is able to compete strongly in the domestic market and carve out some niche export markets for its products.

Incidence of dumping

Import protection for GCL's is low at 5%.

Throughout 2008, GA witnessed the erosion of sales and profitability from the sale of GCL's in its domestic markets. Investigations led to the conclusion that Naue, as a new market entrant into Australia, was leading prices down below economic levels.

Further investigations indicated that Naue's export prices into Australia were substantially lower than their German domestic prices. This dumping by Naue had led to severe price suppression and depression, had caused loss of sales volume and market share and had reduced profitability.

Using the information it had gathered, GA lodged a dumping duty notice on behalf of itself and Elcos against Naue in December 2008.

In January 2009, the Australian Customs Service initiated an investigation into alleged dumping and proceeded with that investigation.

The findings

In May 2009, Australian Customs Services issued a Statement of Essential Facts, supporting our claims and finding that there was a dumping margin of 26.7%. Shortly thereafter a Preliminary Affirmative Determination and Imposition of Securities notice was issued

We believe these findings are correct and fully support our concerns. We also believe that the extent of the dumping margin is of such a magnitude that Naue's intention in adopting this strategy was to destroy our business.

This is the current status of the matter at the time of writing.