

REID Joanne

From: KENNA Michael
Sent: Tuesday, 8 December 2009 12:10
To: 'Leo vandenHeuvel'
Cc: REID Joanne
Subject: FW: Queries from Leo van den Heuvel [SEC=IN-CONFIDENCE:CUSTOMS]
Security Classification: CUSTOMS-IN-CONFIDENCE

Leo

Please find below in red our responses to your questions. Could you please advise if you are happy for a copy of this email, including our responses, to go on the public record.

Please contact me if you wish to discuss.

Regards

Mick Kenna | A/g Director Operations | Trade Measures Branch | Australian Customs and Border Protection Service | P: 02 6275 6544 | F: 02 6275 6888

-----Original Message-----

From: Leo vandenHeuvel [mailto:leo.vandenheuvel@basf.com]
Sent: Thursday, 3 December 2009 14:55
To: REID Joanne
Cc: rod.jones
Subject: RE: Anti-dumping investigation - silicone emulsion concrete admixtures exported from the USA [SEC-UNCLASSIFIED]

Joanne, Rod,

As per earlier emails, below please find some draft comments, would appreciate any feedback you may have, and if necessary how these should be addressed on a more formal basis.

These queries / comments relate to the Tech Dry visit report.

Page 8:

Tec Dry produces 20 different products. SECA accounts for about 50%. I have the impression that costs are not clearly allocated. The less you produce volume wise, the higher the fixed costs are. Was this issue investigated by Customs at Tech Dry?

Following our verification process we are satisfied that we have established costs that reasonably reflect Tech Dry's cost of making and selling SECA in the relevant periods. All cost allocation issues have been considered by the visit team in the preparation of the report.

Page 9

Most of profits over the past 10 years came from SECA. Not surprising: Economies of scale and monopolist

Comment noted.

Page 15

Others factors than alleged dumped imports are quoted " volatility and uncertainty economic climate....."

Possible causes of injury other than the alleged dumping will be considered in forming Customs and Border Protection's final recommendations.

Page 16

Flexible personnel allocation (..., to fill work absences or to meet production schedules.....).

What about those effects in the cost allocation?

All cost allocation issues have been considered by the visit team in the preparation of the report.

Page 22

All the interesting attachments are confidential (like no 4). The law foresees a meaningful non confidential summary, i.e. indexed figures. We want to see such indexed tables for a better understanding.

The example attachment referred to contains invoices for export sales. All the information in these documents, for example customer names, volumes and prices, is confidential to Tech Dry. No useful non-confidential version can be provided, nor is an 'index' of the documents possible. The situation is similar for the other confidential attachments; however the visit team's comments on the attachments are contained in the report. It is considered that this is sufficient to provide a reasonable understanding of what is contained in the confidential material. If you have specific areas that you claim require a better understanding, please advise and we will determine whether any additional non-confidential information can be provided.

Page 32

9.1.6 : Is it really possible that they found " a reasonable reflection of the costs to make and sell the goods."? (see remarks to page 8,9, and 16.)

All cost allocation issues have been considered by the visit team in the preparation of the report.

Page 35

The graph on the top: Where is "Australian production"?

The colour version of the graph indicates that the Australian production is in blue – it is all of 2005/06 and 2006/07, and the lower bars in 2007/08 and 2008/09.

"the company claimed that it had been forced to lower the price..."

On page 36 you find:" the weighted average unit selling price for SECA sold domestically remained stable."

" ... is not reflected in the investigation period...."

This means, the complaint is not lodged on real injury, it was lodged on threat of injury.

We found that Tech Dry's weighted average domestic prices remained stable looking at financial years across the injury analysis period, although there was evidence of price reductions to existing customers from June 2009. The investigation period is the period set to determine if dumping has occurred. Customs and Border Protection (and the Minister) is not restricted to this period in determining if dumping is causing or has caused material injury. Also, price depression is only one factor in the assessment of injury. We also found that Tech Dry had lost sales and market share, suffered price suppression (when expected price rises have been prevented) and a loss of profits and profitability.

10.4 Profit

"loss of profit"

What does that mean?

Tech Dry was a monopolist before BASF came to the market. Monopolists have higher profit margins normally.

"Loss of profit" means that the Australian manufacturer's profits have decreased over the period examined. Australia's anti-dumping legislation states that in considering whether material injury has been caused to an Australian industry the Minister may have regard to the effect of the allegedly dumped goods on the relevant economic factors, one of which is the level of profits earned in the industry (sections 269TAE(1) and 269TAE(3)(e). The anti-dumping system is not designed to protect Australian industries from competition. However, if the competition is from dumped goods that, because of the dumping, are causing material injury to the industry, the industry is eligible for measures that will remove the injury caused by the dumping.

Page 37

Assets.

" ... some equipment is used for SECA and other manufactured goods". What about the real costs of production . See remark page 32

"... difficult to value it." In the EU we have to value assets for tax purposes. What about Australia?

Tech Dry may well have to value its total assets for tax purposes. However, we are particularly concerned with the assets used in the production of SECA and there is understandably some difficulty in valuing these when some equipment is used for both SECA and other products. Given that there has been no change to the assets used in the production of SECA during the injury analysis period we are not viewing this as a factor indicating injury to the industry.

Page 39

10.5.8. Productivity.

... not keep records of the amount of time its manufacturing staff spend manufacturing SECA."

How can you establish costs to make and sell under these conditions?

All cost allocation issues have been considered by the visit team in the preparation of the report and are considered reasonable .

Page 41, last para

The company sees the level of profit of a monopolist as "the normal level of profit." Very doubtful

Comment noted.

These queries / comments relate to PAD report no.150.

Page 6

The Australian industry has experienced reduced profits and profitability over the injury analysis period.

Reduced profits cannot be seen as " material injury to the domestic industry" in the sense of GATT art VI.

As noted above, the level of profits earned by the industry is a relevant economic factor which may, under the legislation, be considered in determining if dumping has caused injury. Under the World Trade Organization Anti-Dumping Agreement, the administering authority must have regard to factors and indices including actual and potential decline in profits (Article 3.4).

Page 11, Confidential appendix 3 (preliminary normal value)

This calculation refers to BASF. Therefore we should ask for an individual disclosure of this document.

Customs and Border Protection could release this information to BASF Australia upon being authorised to do so by BASF USA.

Page 12

The sales volume of the graph should be compared to the total Australian market. Do we have these corresponding figures?

The trend in market shares is discussed in section 10 of the PAD, which says that Tech Dry's market share fell in 2007/08 and 2008/09. As there are only two players in the Australian market for SECA , we have not graphed this information as it may reveal information confidential to the parties.

Page 13

Price suppression

Tech Dry was a monopolist. Therefore the development of this graph is normal, if a new competitor comes on a monopolistic market.

Customs refers to price depression after the poi. The poi should be the basis for any decision, except if threat of injury is claimed. This is not the case.

Two points are important here. Customs and Border Protection is not limited to the investigation period in examining injury and price depression is only one factor to be considered in assessing injury. As noted earlier, if injury is being caused by dumping, the industry is eligible for measures, regardless of whether it held a monopoly position in the market prior to the entry of the dumped goods.

Last paragraph:

Is Customs sure that Tech Dry has provided a clear cost allocation product wise and domestic- / exportwise for the product under investigation? This was not clear from the former publications, incl. the complaint.

All cost allocation issues have been considered in the preparation of the Tech Dry visit report and the making of the PAD.

Page 15, 1st para

This gives us the possibility for further discussions.

The findings in the PAD are preliminary, based on information available at the time of making the PAD. Further investigation of the matters referred to will continue. Customs and Border Protection welcomes any specific submissions or further information that you wish to provide in this area.

Page 18

We would like to have non confidential summaries of the appendices.

Appendix 1 is a legal instrument signed by the delegate of the CEO to make the PAD. You are welcome to a copy of this if you would like it. Appendix 2 contains Tech Dry's data which is summarised in the graphs in the report. Appendices 3 and 4 are the PAD calculations. We can provide these to BASF Australia upon being authorised to do so by BASF USA.

Thanks in advance for any assistance or guidance you may be able to offer.

Best regards

Leo van den Heuvel
Regional Director

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